SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 13(1)

EDWARD J. GARRITY, ET AL., APPELLANTS,

vs.

NEW JERSEY.

APPEAL FROM THE SUPREME COURT OF NEW JERSEY

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IN THE SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket No. A-228-63

STATE OF NEW JERSEY,

vs.

HELEN B. NAGLEE, EDWARD J. GARRITY, and EDWARD VIRTUE, Defendants-Appellants.

Criminal Action

On Appeal from the Camden County Court

Joint Appendix

[fol. 1]

INDICTMENT No. 327-62

The Grand Jurors of the State of New Jersey, for the County of Camden upon their oaths, Present That Helen B. Naglee, Violations Clerk and Court Clerk of the Municipal Court; Edward J. Garrity, Chief of Police and Edward Virtue, duly sworn police officer; all of the Borough of Bellmawr, County of Camden aforesaid, and within the jurisdiction of this court during the year 1959 and up to and including June 29, 1961 did commit the crime of conspiracy in that, then and there, they unlawfully conspired together to pervert and obstruct the due administration of the motor vehicle traffic laws of this state in that they did unlawfully, knowingly and corruptly agree to dispose of certain traffic offense cases where motorists were charged with operating motor vehicles while under the influence of intoxicating liquor in violation of R. S. 39:4-50, by altering and falsifying the summonses and complaints made by the arresting officers, thereby changing the nature of the offense from one of "Driving While Under the Influence of Intoxicating Liquor" to one involving a lesser penalty, whereby the defendants would not be prosecuted on the

original charges, but would be prosecuted, instead, under substituted charges; and in furtherance of said conspiracy would then cause entries to be made in the dockets of the Municipal Court of the Borough of Bellmawr certifying that the defendants had been convicted of such substituted charges, without making a record in the dockets of a charge of driving under the influence of intoxicating liquor; and would then, in such cases, cause receipts to be made in the name of said Municipal Court under the hand of Helen B. Naglee, Court Clerk and Clerk of the Violations Bureau [fol. 2] as aforesaid, said receipts to be issued under the direction and sanction of the aforesaid Edward J. Garrity, and were to acknowledge receiving fines in satisfaction of judgments of conviction of the said substituted offenses, whereas, in truth, no hearings were to be held nor judgments of conviction entered in open court in any of said matters; and, further, in some cases were to require such persons who had been originally charged with driving while under the influence of intoxicating liquor to post either cash as bail conditioned for their later appearance, or in amounts represented by said Edward J. Garrity as being sufficient for satisfying fines or costs which could or would be imposed later; whereas in truth no court hearings were intended to be held and the amounts of the fines and costs as now shown in the dockets of the Borough of Bellmawr were in amounts fixed arbitrarily by said Edward J. Garrity, although such amounts required to be deposited would be larger in some cases than the amounts so fixed; and in furtherance of said conspiracy to fail to account and pay to said offenders, or the Borough of Bellmawr, said balances remaining but instead, in furtherance of said conspiracy to divert, apply and appropriate same to uses not authorized or sanctioned by law;

Overt Acts

And that in execution of the aforesaid conspiracy and to effect the object thereof the following overt acts were done:

1. On November 9, 1960, Edward Virtue, then and there being a duly sworn police officer of the Borough of Bell-[fol. 3] mawr, County of Camden, New Jersey did arrest and make a complaint against one Robert A. Franklin, charging him with Operating a Motor Vehicle While Under the Influence of Intoxicating Liquor, contrary to R. S. 39:4-50, said complaint bearing number 5759 and issued out of the Municipal Court of the Borough of Bellmawr; and

Between the date aforesaid and June 29, 1961, Helen B. Naglee, then being both Violations Clerk and Municipal Court Clerk of the Borough of Bellmawr, did alter and falsify said complaint whereby the charge made was changed to one of Careless Driving, R. S. 39:4-97, by striking out the offense charged and substituting the offense of Careless Driving; and at or about the same time the said Edward Virtue did make a complaint against said Robert A. Franklin charging him with being a Disorderly Person in violation of N. J. S. 2A:170-29; and

Between the dates aforesaid the said Helen B. Naglee did sign and issue out of said court receipt number 16314, dated November 30, 1960, to and in the name of said Robert A. Franklin, acknowledging the payment of $15.00 composed of $10.00 fine and costs of $5.00 purporting to be in satisfaction of judgment of conviction of Careless Driving as aforesaid; and

The said Helen B. Naglee did make in the Criminal Docket of the said borough an entry showing the receipt of $105.00 in satisfaction of a Judgment of Conviction for Disorderly Conduct; and

Between the dates aforesaid, the said Edward J. Garrity, did sign receipt dated November 29, 1960, out of said Violations Bureau of said borough to and in the name of Robert A. Franklin, being the said Robert A. Franklin aforesaid, acknowledging receipt of the amount of $190.00 as cash bail conditioned for the appearance of said Robert A. [fol. 4] Franklin before the Municipal Court of said borough on November 30 next; and following same said amount

of $190.00 came into the possession of one Edward J. Garrity aforesaid; and

Following the disbursement by the said Edward J. Garrity to the Borough of Bellmawr of the amounts fixed in the receipts issued for the offenses of Careless Driving and Disorderly Conduct as aforesaid, there remained a balance of $70.00 in the hands of said Edward J. Garrity which sum he has ever since failed to dispose of according to law.

2. On June 2, 1960, Edward Virtue, then and there being a duly sworn police officer of the Borough of Bellmawr, County of Camden, New Jersey, did arrest and make a complaint against one John Gregal, charging him with Operating a Motor Vehicle While Under the Influence of Intoxicating Liquor, contrary to R. S. 39:4-50, said complaint bearing number 5611 and issued out of the Municipal Court of the Borough of Bellmawr; and

Between the date aforesaid and June 29, 1961, Helen B. Naglee, then being both Violations Clerk and Municipal Court Clerk of the Borough of Bellmawr, did alter and falsify said complaint whereby the charge made was changed to one of Careless Driving, R. S. 39:4-97, by striking out the offense charged and substituting the offense of Careless Driving; and at or about the same time the said Edward Virtue did make a complaint against said John Gregal charging him with being a Disorderly Person in violation of N. J. S. 2A:170-29; and

Between the dates aforesaid the said Helen B. Naglee did sign and issue out of said court receipt number 15646, dated June 21, 1960, to and in the name of John Gregal, acknowledging the payment of $15.00 composed of $10.00 fine and [fol. 5] costs of $5.00 purporting to be in satisfaction of judgment of conviction of Careless Driving as aforesaid; and

The said Helen B. Naglee did make in the Criminal Docket of the said borough an entry showing the receipt of $55.00 on June 22, 1960, in satisfaction of a Judgment of Conviction for Disorderly Conduct; and

On or about June 1, 1960, the said John Gregal did deposit with said Edward J. Garrity the sum of $150.00 as bail; and

Following the disbursement by the said Edward J. Garrity to the Borough of Bellmawr of the amounts fixed in the receipts issued for the offenses of Careless Driving and Disorderly Conduct as aforesaid, there remained a balance of $80.00 in the hands of said Edward J. Garrity which sum he has ever since failed to dispose of according to law.

3. On May 28, 1960, Edward Virtue, then and there being a duly sworn police officer of the Borough of Bellmawr, County of Camden, New Jersey, did arrest and make a complaint against one Linwood Finney, charging him with operating a Motor Vehicle While Under the Influence of Intoxicating Liquor, contrary to R. S. 39:4-50, said complaint bearing number 5537 and issued out of the Municipal Court of the Borough of Bellmawr; and

Between the date aforesaid and June 29, 1961, Helen B. Naglee, then being both Violations Clerk and Municipal Court Clerk of the Borough of Bellmawr, did alter and falsify said complaint whereby the charge made was changed to one of Careless Driving, R. S. 39:4-97, by striking out the offense charged and substituting the offense of Careless Driving; and at or about the same time the said Edward Virtue did make a complaint against said Linwood Finney [fol. 6] charging him with being a Disorderly Person in violation of N. J. S. 2A:170-29; and

Between the dates aforesaid the said Helen B. Naglee did sign and issue out of said court receipt number 15637, dated June 20, 1960, to and in the name of Linwood Finney, acknowledging the payment of $15.00 composed of $10.00 fine and costs of $5.00 purporting to be in satisfaction of judgment of conviction of Careless Driving as aforesaid; and

The said Helen B. Naglee did make in the Criminal Docket of the said borough an entry on June 22, 1960, showing the receipt of $55.00 in satisfaction of a Judgment of Conviction for Disorderly Conduct; and

On or about June 1, 1960, the said Linwood Finney did deposit with said Edward J. Garrity the sum of $150.00 as bail conditioned for the appearance of said Linwood Finney before the Municipal Court of said borough on June 22 next; and

Following the disbursement by the said Edward J. Garrity to the Borough of Bellmawr of the amounts fixed in the receipts issued for the offenses of Careless Driving and Disorderly Conduct as aforesaid, there remained a balance of $80.00 in the hands of said Edward J. Garrity which sum he has ever since failed to dispose of according to law.

4. On January 10, 1960, Edward Virtue, then and there being a duly sworn police officer of the Borough of Bellmawr, County of Camden, New Jersey, did arrest and make a complaint against one William R. Snyder, charging him with Operating a Motor Vehicle While Under the Influence of Intoxicating Liquor, contrary to R. S. 39:4-50, said complaint bearing number 5311 and issued out of the Municipal Court of the Borough of Bellmawr; and

[fol. 7] Between the date aforesaid and June 29, 1961, Helen B. Naglee, then being both Violations Clerk and Municipal Court Clerk of the Borough of Bellmawr, did alter and falsify said complaint whereby the charge made was changed to one of Careless Driving, R. S. 39:4-97, by striking out the offense charged and substituting the offense of Careless Driving; and at or about the same time the said Edward Virtue did make a complaint against said William R. Snyder charging him with being a Disorderly Person in violation of N. J .S. 2A:170-29; and

Between the dates aforesaid the said Helen B. Naglee did sign and issue out of said court receipt number 14814, dated January 20, 1960, to and in the name of William R. Snyder, acknowledging the payment of $15.00 composed of $10.00 fine and costs of $5.00 purporting to be in satisfaction of judgment of conviction of Careless Driving as aforesaid; and

The said Helen B. Naglee did make in the Criminal Docket of the said borough an entry on January 20, 1960,

showing the receipt of $105.00 in satisfaction of a Judgment of Conviction for Disorderly Conduct; and

Between the dates aforesaid, the said Edward J. Garrity, did sign receipt dated January 18, 1960, out of said Violations Bureau of said borough to and in the name of William R. Snyder, being the said William R. Snyder aforesaid, acknowledging receipt of the amount of $225.00 as cash bail conditioned for the appearance of said William R. Snyder before the Municipal Court of said borough on January 20 next; and

Following the disbursement by the said Edward J. Garrity to the Borough of Bellmawr of the amounts fixed in the receipts issued for the offenses of Careless Driving and Disorderly Conduct as aforesaid, there remained a balance of [fol. 8] $105.00 in the hands of said Edward J. Garrity which sum he has ever since failed to dispose of according to law.

5. On October 4, 1959, Edward Virtue, then and there being a duly sworn police officer of the Borough of Bellmawr, County of Camden, New Jersey, did arrest and make a complaint against one Robert T. Killian, charging him with Operating a Motor Vehicle While Under the Influence of Intoxicating Liquor, contrary to R. S. 39:4-50, said complaint bearing number 5157 and issued out of the Municipal Court of the Borough of Bellmawr; and

Between the date aforesaid and June 29, 1961, Helen B. Naglee, then being both Violations Clerk and Municipal Court Clerk of the Borough of Bellmawr, did alter and falsify said complaint whereby the charge made was changed to one of Passing Regulation, R. S. 39:4-85, by striking out the offense charged and substituting the offense of Passing Regulation; and at or about the same time the said Edward Virtue did make a complaint against said Robert T. Killian charging him with being a Disorderly Person in violation of N. J. S. 2A:170-29; and

Between the dates aforesaid the said Helen B. Naglee did sign and issue out of said court receipt number 14384, dated October 16, 1959, to and in the name of Robert T. Killian,

acknowledging the payment of $10.00 purporting to be in satisfaction of Judgment of Conviction of Passing Regulation as aforesaid; and

The said Helen B. Naglee did make in the Criminal Docket of the said borough an entry on October 14, 1959, showing the receipt of $55.00 in satisfaction of a Judgment of conviction for Disorderly Conduct; and

Between the dates aforesaid the said Helen B. Naglee did sign and issue out of said court receipt dated October 14, [fol. 9] 1959, to and in the name of Robert T. Killian, being the said Robert T. Killian aforesaid, acknowledging receipt of the amount of $180.00 as cash bail conditioned for the appearance of said Robert T. Killian before the Municipal Court of said borough on October 21, next; and following same said amount of $180.00 came into the possession of one Edward J. Garrity aforesaid; and

Following the disbursement by the said Edward J. Garrity to the Borough of Bellmawr of the amounts fixed in the receipts issued for the offenses of Passing Regulation and Disorderly Conduct as aforesaid, there remained a balance of $125.00 in the hands of said Edward J. Garrity which sum he has ever since failed to dispose of according to law.

6. On November 29, 1959, Edward Virtue, then and there being a duly sworn police officer of the Borough of Bellmawr, County of Camden, New Jersey, did arrest and make a complaint against one Phyllis M. Zippel, charging her with Operating a Motor Vehicle While Under the Influence of Intoxicating Liquor, contrary to R. S. 39:4-50, said summons bearing number 5291 and issued out of the Municipal Court of the Borough of Bellmawr; and

Between the date aforesaid and June 29, 1961, Helen B. Naglee, then being both Violations Clerk and Municipal Court Clerk of the Borough of Bellmawr, did alter and falsify said complaint whereby the charge made was changed to one of Careless Driving, R. S. 39:4-97, by striking out the offense charged and substituting the offense of Careless Driving; and

The said Phyllis M. Zippel did not appear in court in response to the summons served upon her to appear and answer to said charge of Driving While Under the Influence of Intoxicating Liquor but as by the records in said Municipal [fol. 10] Court receipt issued in a matter entitled State v. Phyllis M. Zippel in the amount of $15.00 in satisfaction of a charge of Careless Driving, R. S. 39:4-97, signed by Helen B. Naglee, Clerk, dated December 4, 1959, receipt number 14652.

7. On February 7, 1960, Edward Virtue, then and there being a police officer of the Borough of Bellmawr, County of Camden, New Jersey, did arrest and make a complaint against one Herbert W. Brining, charging him with Operating a Motor Vehicle While Under the Influence of Intoxicating Liquor, contrary to R. S. 39:4-50, said complaint bearing number 5366 and issued out of the Municipal Court of the Borough of Bellmawr; and

Between the date aforesaid and June 29, 1961, Helen B. Naglee, then being both the Violations Clerk and Municipal Court Clerk of the Borough of Bellmawr, did alter and falsify said complaint whereby the charge made was changed to one of Careless Driving, R. S. 39:4-97, by striking out the offense charged and substituting the offense of Careless Driving; and

Between the dates aforesaid the said Helen B. Naglee did sign and issue out of said court receipt number 14953, dated February 16, 1960, to and in the name of Herbert W. Brining, acknowledging payment of $15.00 composed of $10.00 fine and costs of $5.00 purporting to be in satisfaction of judgment of conviction of Careless Driving as aforesaid; and

The said Herbert W. Brining did deposit with said Helen B. Naglee cash bail in the amount of $35.00; and following same said amount of $35.00 came into the possession of one Edward J. Garrity aforesaid; and

Following the disbursement by said Edward J. Garrity to the Borough of Bellmawr of the amounts fixed in the

[fol. 11] receipt issued for the offense of Careless Driving as aforesaid, there remained a balance of $20.00 in the hands of said Edward J. Garrity which sum he has ever since failed to dispose of according to law.

8. On March 30, 1960, Edward Virtue, then and there being a police officer of the Borough of Bellmawr, County of Camden, New Jersey, did arrest and make a complaint against one Joseph H. Scott, charging him with Operating a Motor Vehicle While Under the Influence of Intoxicating Liquor, contrary to R. S. 39:4-50, said complaint bearing number 5451 and issued out of the Municipal Court of the Borough of Bellmawr; and

Between the date aforesaid and June 29, 1961, Edward Virtue, a police officer of the Borough of Bellmawr, did alter and falsify said complaint whereby the charge made was changed to one of Careless Driving, R. S. 39:4-97, by striking out the offense charged and substituting the offense of Careless Driving; and at or about the same time the said Edward Virtue did make a complaint against said Joseph H. Scott charging him with being a Disorderly Person in violation of N. J. S. 2A:170-29; and

The Traffic Dockets of the Municipal Court of the said Borough of Bellmawr show an entry of a penalty of $15.00 paid by Joseph H. Scott in satisfaction of a Judgment of Conviction for Careless Driving; and

Further, between the dates aforesaid, the said Helen B. Naglee did also sign and issue on April 6, 1960, a receipt bearing number 15193, out of said court, in the name of said Joseph H. Scott, acknowledging the payment of $105.00 in satisfaction of a Judgment of Conviction for Disorderly Conduct; and

Between the dates aforesaid, the said Joseph H. Scott [fol. 12] did deposit with the said Helen B. Naglee the sum of $250.00 as bail and later the said sum of $250.00 came into the possession of Edward J. Garrity aforesaid; and

Following the disbursement by the said Edward J. Garrity to the Borough of Bellmawr of the amounts fixed in the

receipts issued for the offenses of Careless Driving and Disorderly Conduct as aforesaid, there remained a balance of $130.00 in the hands of said Edward J. Garrity which sum he has ever since failed to dispose of according to law, contrary to the provisions of N. J. S. 2A:98-1 and 2A:98-2, and against the peace of this State, the Government and dignity of the same.

Norman Heine, County Prosecutor.

A True Bill: Gordon A. Carrigan, Jr., Foreman.

[fol. 13]

Transcript of Testimony—April 29, 1963

Camden, New Jersey.

Before: Hon. Anthony C. Mitchell, J. C. C.

APPEARANCES:

James G. Aiken, Esq., Assistant Prosecutor for the State of New Jersey.

Angelo D. Malandra, Esq., Attorney for Defendants.

(Jury impaneled and sworn.)

The Court: All right gentlemen, you may proceed.

• • • • • • •

[fol. 197]

(The following takes place out of the presence of the jury.)

ARGUMENT OF COUNSEL RE ADMISSIBILITY OF STATEMENTS

The Court: Now gentlemen, I think we've reached the stage of the proceeding where there seems to be some talk

concerning the admissibility of certain statements made by [fol. 198] one or more or perhaps all of the defendants on two separate occasions. I believe on one occasion, some statements were made to Mr. Rigg and who was the attorney I think investigating the matter by the attorney general or the Supreme Court in the very beginning, and I think the second one was a statement taken by the Prosecutor's office.

Mr. Aiken: That is correct, Your Honor.

The Court: Through Prosecutor Kaplan, as I understand it further. There are two statements made by each of the defendants, is that correct?

Mr. Aiken: That is correct.

The Court: One to Mr. Rigg, and the other to Mr. Kaplan. The admissibility, therefore, is to be decided as a matter of law by the court, and then after that, evidence concerning the voluntariness of the stated statements in front of the jury. This procedure will have to do with the admissibility of the statements as far as the law is concerned. You may proceed.

Mr. Aiken: I call Mr. Garifo.

[fol. 199] LAWRENCE GARIFO, being first duly sworn, testifies as follows:

Direct examination.

By Mr Aiken:

Q. Mr. Garifo, you are a certified court stenographer in the courts of New Jersey?

A. Yes.

Q. And you have been for some years?

A. Yes sir.

Q. Do I understand, Mr. Garifo, that on Friday, November 10th, 1961, you were called upon to take certain state-

ments in the Municipal Building in the Borough of Bellmawr as a certified court reporter?

A. Yes sir.

Q. And, did you take those certain statements at that time and place?

A. Yes.

Q. And what method did you use to take the statements?

A. Stenotype machine.

Q. And subsequent to your taking those statements, did you transcribe your stenotype notes?

A. Yes sir.

Q. I show you what I think is the original and ask you whether or not that is the original transcript that you made of the statements taken that day?

A. Yes sir.

Q. Now, will you tell us whose statements you took that day?

A. The following: Theodore Francis Jeffers, Thomas [fol. 200] Sears, Edward Virtue, Frank Romano, Helen B. Naglee, and Chief Edward J. Garrity.

Q. I might interrupt to say to the court that I am only interested in the statements of the defendant.

The Court: Statements of the defendant, that's correct.

Q. Now, can you tell us very briefly, Mr. Garifo, what were the preliminary arrangements made prior to taking the statements, how were you called in to the matter and what did you do when you got to Bellmawr and so on?

A. Well, at the time I was an official shorthand reporter employed by The State of New Jersey and I was ordered by Mr. Newman through the Supervisor at the time to go to Bellmawr and report these statements with Mr. Rigg.

Q. Now, do you recall what time of the day you got to Bellmawr on the date you took the statements in question?

A. Approximately ten minutes to nine.

Q. And where did you go when you got there?

A. To the Municipal Building.

Q. In what room in the Municipal Building?

A. Well, there's a police station on one side and municipal court on the other side, just in the lobby.

Q. And, did you see or meet someone there?

A. Mr. Rigg.

Q. What did you and Mr. Rigg do after that?

A. I believe at that time we proceeded to the fire building.

Q. And did you take statements actually in what you refer to as the fire building?

A. Yes.

[fol. 201] Q. And who did you proceed over to the fire building with?

A. Mr. Rigg.

Q. Was any of the defendants present when you went over there?

A. No sir, I don't believe so.

Q. All right, where were the defendants when you first saw them?

A. Well, I saw them as they were brought in one at a time.

Q. You didn't see them prior to your actually starting to take the statements?

A. No sir.

Q. Now, I think that the first one of the defendants in this case that you took was Mr. Virtue?

A. That's correct.

Q. Now, after you transcribed your notes into the form that you now have in front of you, did you check your transcript that you have in front of you against the notes that you took originally?

A. Yes, well, I dictated the notes as they appear in the transcript.

Q. You dictated into a machine or to a girl?

A. No, into a Stenorette.

Q. From your original notes?

A. Yes.

Q. And then who actually ran off the typewritten transcript?

A. My transcriber.

Q. And after your transcriber ran off the transcript from the dictated transcript from your notes, did you check the transcript against your original notes?

A. I proof read it, proof read the original.

[fol. 202] Q. You mean by proof reading by comparison with the original notes?

A. No sir.

Q. What did you proof read it from?

A. I just proof read it for any glaring mistakes.

Q. Now, when Mr. Virtue's statement was taken, who was present?

A. Mr. Rigg, Mr. Virtue, and myself.

Q. Was Mr. Virtue given any kind of a warning concerning his rights?

A. Preliminary statement by Mr. Rigg, yes.

Q. Can you tell us what that preliminary statement was?

A. From memory?

Q. No, from the transcript.

A. Page 62, I think it is, the questioning is by Mr. Rigg and his question, "As you know by now, detective, I am working under a Supreme Court order issued last June directing me to investigate certain irregularities in the handling of motor vehicle matters in the Municipal Court here in Bellmawr, together with various persons having any connection with the court, including the police department. That is why I scheduled this day, to ask you questions pertaining to this investigation.

Before I do, I want to advise you anything you say must be voluntarily, of your own free will, without threats or coercion or promise or reward and anything you do say may be used against you or any person in a subsequent criminal proceeding or proceedings in the courts of our state.

You do have under our statutes, as you may know, a privilege to refuse to disclose any matters which may tend to incriminate you; however, if you make such a disclosure with knowledge of this right and without coercion, you [fol. 203] thereby waive this right or privilege with regard to any phase of this investigation.

This right or privilege that you have is limited to the extent that you as a police officer, when sworn and asked questions pertaining to your office and your conduct therein, if you refuse to answer, you then may be subject to a proceeding to have you removed from the department."

Mr. Malandra: This is where I would like to enter an objection, to this statement. If Your Honor pleases, this is on the ground that the statement with the admonition as given by Mr. Rigg, could not thereafter be voluntary. You will note that the statement is completely void of any remark concerning the right of this defendant to have counsel. There is no remark whatsoever concerning counsel. Secondly, may it please the court, you will note that the latter part, the last statement made by Mr. Rigg is that this right or privilege that you have is limited to the extent that you as a police officer, when sworn and asked questions pertaining to your office and your conduct therein, if you refuse to answer, you may then be subject to a proceeding to have you removed from the department. Now, as I say, Your Honor, that this is not advising the defendant of his constitutional right, by saying to him if you do not cooperate, you will be removed from the police force. Now, there is your choice. Either come on or get out. Now, under those circumstances, may it please the court, I cannot see how this statement can be voluntary.

The Court: I'll hear you, Prosecutor.

Mr. Malandra: I would like to add, may it please the court, that this is not an ordinary statement. This is more [fol. 204] or less like an inquisition by the Attorney General of the State of New Jersey, waiving a Supreme Court flag. Now, Your Honor please, under those circumstances, I can't see how it could be voluntary, anything that he said after that.

Mr. Aiken: Your Honor, I think the admonition contained in the statement of rights by Mr. Rigg is quite required, as a matter of fact, I believe it to be required by our statutes and I would like to call the court's attention

to 2-A:8771.1, I think it is, but anyway, that is the Statute, Your Honor, as I understand it, requiring this warning to be given because it also requires that if a public official does not testify or give his statements that proper proceedings, he is subject to removal from office, or whatever it happens to be. And, I think that if the warning had not been given, then the defendant would be in the position of coming in and saying, well, I wasn't warned of that situation, and I should've been. So that he can play it either way, if he desires, and obviously that is not the intent of the statute.

Mr. Malandra: If Your Honor please, I argue that a little bit differently, that statute says that if a police officer refuses to testify by taking the fifth amendment, he subjects himself to being chased out of the department. That's got nothing to do with this, because if he refused to take it, the next procedure, not this one, the next proceeding would be to take him out, but he would certainly have a right to refuse here. This was given as a threat. I'd like to add, Your Honor, that in the revised rules of New Jersey courts, 3:2-3, where the rule is that even a magistrate must say to a defendant, you have a right to counsel, and you [fol. 205] have the right to counsel from the very beginning, and if you don't have counsel, we'll get one for you. We'll pay if you can't pay all of this. Now, certainly, if a lowly magistrate must do that according to the court rules, I should think that the chief law enforcement officer of our state ought to use it.

The Court: You mean the Assistant to the Chief Law Enforcement.

Mr. Malandra: He's the chief when he's there.

Mr. Aiken: While we're there, the case of State vs. Smith, 32 New Jersey, quite a lengthy case—

The Court: I am very well acquainted with it but refresh my memory.

Mr. Aiken: 32 N. J., 501, in that case it was a murder case, State vs. Smith, a murder case where two young colored fellows, seventeen years of age, were picked up

several days after the murder and questioned for some nine and a half hours until one A. M., until two A. M. in the morning, without counsel, and as far as I could read of the case, without any warning, although there may have been some form of a warning in which the Supreme Court of New Jersey says there was nothing wrong with that whatever.

The Court: Now, the case, I think perhaps more in detail, is the authority in my opinion for this. Number one, as far as the voluntariness of a confession is concerned, obviously if an explanation of some type is not given to the [fol. 206] defendant, obviously his rights are violated, but they don't say that you have to go through any particular form. The matter that is before the court is to consider all of the testimony in the case and regardless of what was concerned or what may not have been said, to make up his mind, whether or not it was a voluntary statement given by the person. There is a mistaken idea, I think, and I think the matter further corroborated by that case, that a certain particular form is necessary, and many of the police departments do have, I'm here to warn you of your constitutional rights and this and that appear the other thing no particular form is necessary. The test is this, regardless of what was said or what was done, and I advisedly say what was done because the latest case on today's rule that even psychological coercion can cause an involuntary confession, I forget the name of the case, it has just come out here within the past couple of months, so to test this and the exact words used or the exact words not used, the test is to consider what happened at the time that the rights were being explained or not properly explained, and after the whole thing is considered from top to bottom again emphasizing the fact that no particular wording is necessary, the court then makes up his mind whether or not this is a voluntary confession. That is the test. Now, let us therefore, what was that thing you wanted me to look at?

Mr. Aiken: 2A:8117.1.

The Court: Get the book on this, however, while we're waiting for the book let me actually take the statement as transcribed, and by the Attorney General, or transcribed by a stenographic reporter which purports to be what the Attorney General said.

[fol. 207] Mr. Malandra: Your Honor, before you go into that, may I, for the purposes of the record, state that in the Linum vs. the State of Illinois, this is the United States Supreme Court case decided this March, in which a confession was involved where a woman was framed in a dope case, and the police were questioning her and she was kind of reluctant to give a statement, and one of the police officers said that as much as you're on relief, and away from your husband with the two children, if you don't go, when you're called into court, you're going to lose this relief and you're going to lose the two children.

The Court: I have no quarrel. I think the New Jersey court concurs in that decision.

Mr. Malandra: We're in a position where an entire life is gone, job, pension, life, everything is gone.

The Court: Well, let's take a look at the actual statement and consider it as being a violation of the defendant's rights. Now, this is Mr. Virtue's statement.

Mr. Malandra: Page 63, Your Honor.

The Court: The first part I don't think is in question, down to the particular type of work, the question, the first part is all right.

Mr. Malandra: No, I do not—

The Court: Well, finish up the first part where he says this is why I scheduled this today to ask you questions pertaining to this investigation. And then, the next part, [fol. 208] before I do, I went to advise you anything you say must be voluntary of your own free will, without threat, coercion, or promise of reward, or anything you do say may be used against you or any person in a subsequent proceeding or proceedings in the course of our

State. Do you contend there is anything wrong with the explanation given by—

Mr. Malandra: No, not to that paragraph.

The Court: Now, the third paragraph you do have under our statutes, as you know, a privilege to disclose any matters which may tend to incriminate you; however, if you make such a disclosure with knowledge of this right and without coercion, you thereby waive this right or privilege with regard to any phase of this investigation. Now, is there any contention that that is improper?

Mr. Malandra: There is nothing wrong with that, sir.

The Court: The next one: This right or privilege that you have is limited to the extent that you as a police officer when sworn and asked questions pertaining to your office and your conduct therein, if you refuse to answer, you then may be subject to a proceeding to have you removed from the department.

Mr. Malandra: This is my objection.

The Court: That is where upon you and the Assistant Prosecutor disagreed. Well, let's confine our argument to that particular paragraph, to crystallize the issue here in [fol. 209] dispute. Now, 17.1 was what you were talking about, so that we may all understand 17.1, let's read it.

I'm reading from New Jersey Revised Statutes, annotated 2A:81-17:1, forfeiture of office or employment pertaining to pension rights, to testify on the ground it is incrimination. This of course, is a statute passed by the legislature of New Jersey, and it is comparatively new in origin, at least speaking of it in a general way, and it reads as follows: "Any person holding or who has held an elective or appointive public office, position, or employment with the state, county, or municipality, who refuses to testify upon matters relating to the office, position, or employment on behalf of the prosecution, upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself, or refuse to waive immunity when called by a grand jury to testify therefore,

or who willfully refuses or fails to appear before any court, commission or party of the state which has a right to inquire under oath upon matters relating to position or employment, or who having been sworn, refuses to testify or to answer any material question upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself, shall if holding elective public office, position, or employment, be removed therefrom, or shall thereby forfeit his office, position or employment, and any vested or future rights of tenure or pension, granted to him by any law of this state, provided it relates to the matter which occurred or arose within the preceding five years. Any person so far claiming his office, position, or employment shall not thereafter be eligible for election or appointment to any public office, position, or employment in this state, from the laws of 1959, Chapter 259, page 1759, paragraph 1."

Now, the court, of course, is with some degree acquainted [fol. 210] with that particular statute. And, I think again, the court can go so far as to feel that he under maybe the thinking of the legislature, when they passed the statute, and I suppose that this thinking of at least someone there was a duty and an obligation upon someone who was engaged in the type of employment set down there, like an appointment of office, to forfeit or give up certain rights they might have because their official position there with cases previously when public officials did stand behind the dated concept of self incrimination with the result that members of the legislature, I guess, felt that justice was being thwarted by the exercise of that constitutional privilege.

Now, this statute, as I see it, in effect says you still have the constitutional privilege, you have a right to refuse to answer, but when the legislature of the State of New Jersey feels that you have a different obligation than the average person who does not occupy a public position. Although you do have a constitutional right to exercise that

right, we feel it is your positive duty and if you do not do it, if you choose to accept and stand upon your rights of the constitution, then we feel that as a public officer you should therefore forfeit or be penalized for doing this such thing on the ground that you owe it to the public, as a public official. Now, that is in a general way, as I understand the statute. Let me however, go one step further and get back to this particular paragraph. I will read it: "The right of privilege that you have is limited to the extent that you as a police officer when sworn and asked questions pertaining to your office and your conduct therein, if you refuse to answer, you may then be subject to a proceeding to have you removed from the department." Now, let us assume that some policeman or some public official is unacquainted with this particular statute. Don't you think [fol. 211] that it's the right and the obligation of the person questioning him to explain his rights, either he can stand merely upon his constitutional rights, which are guaranteed, they could have refused to answer. The only thing if they had refused to answer, then as a public official, an answer would be you must forfeit certain rights that you ordinarily would have under the constitutional provisions, merely because they're a public official, whereas you for example, you could still refuse to answer and nobody could do a thing to you, but if you were a public official, the legislature saw fit to arrange a proceeding, where if it were probably proven, you could forfeit the rights you had under the particular office, and alike.

Now, that is what the legislature said, my feeling in the matter, and of course, is that instead of, shall we say, jeopardizing his position, I think Mr. Rigg was obligated under the circumstances, to give this explanation to him, not as a threat, but explanation of his rights legally. Now, you mentioned the federal case. Obviously, as soon as you start threatening people with cutting off relief from this, that and the other thing, that is the very wording itself in the nature of a threat, it is an oral duress, and there it's

a million per cent wrong. These people weren't threatened, or Mr. Virtue, whoever it was, wasn't threatened. He was being told in plain simple words you can rely merely upon your constitutional rights, but if you do, as a public officer, the law of the State of New Jersey is, and obviously the federal case, there is nothing in that, no law which says that because the person would testify that they were going to be deprived of receiving relief, providing they were receiving it lawfully, so that we do not hear an analogous of a similar situation. We have a situation here where the attorney general, in my opinion, at least, is telling him you [fol. 212] have a choice of either relying entirely upon the constitutional rights, but if you do, I want to inform you that by the state law of New Jersey, you may get hurt as far as a penalty is concerned. Now that is the way I read it. You may have some different opinion or interpretation, and if mine is wrong, please persuade me that I am wrong by additional argument.

Mr. Malandra: Well, I don't think there is any duty on the part of the Attorney General when he is trying to get a statement from a defendant to be told that there is such a law pertaining to public officials, or, to which, a police officer. This is a matter that the police officer himself subjects himself to, after, Your Honor, not before, but after he refuses to testify on the grounds that he might incriminate himself. This particular law is of absolutely no value at all until he has refused to testify on the grounds that he might incriminate himself. Then this special proceeding can go against a police officer, and what could they do about it, the very worst they can do is say you, Mr. police officer, you are out of business.

The Court: I do not feel that argument has too much weight and I will permit you to argue further. Let us assume for the sake of argument, that your conclusion is correct, you start to ask the gentleman certain questions, he is unacquainted with his right to rely upon the constitution. He says I don't want anymore public jobs. This is a nui-

sance, it's been this, that and the other, which some of them possibly feel, because shall we say in many cases, unjust criticism, accusations, and alike, goes for judges too, I guess, we are some kind of police officers too, it goes for the prosecutor, and many have some doubt as to [fol. 213] actually the conscientiousness of prosecutors, especially in the present day, in the era of gambling, by the professional, I'm talking about. Now, the fellow refuses to answer on the grounds that he may incriminate himself. Maybe already he has said enough that he's got himself incriminated. Now, you proceed to turn around and tell him, hey, if I had known that, I wouldn't have opened my mouth.

Mr. Malandra: That's why he should have told him he needed a lawyer in the first instance, which they didn't do in this case.

The Court: Do you have any case to say that before a person can give a voluntary confession you must obtain a lawyer for him? State vs. Smith is the latest case, as I understand it, as far as voluntariness or for confessions is concerned, and I think as a practical matter, the judge or somebody ruled this way, that the confession was involuntary and therefore of no useful purpose.

Mr. Malandra: Your Honor please, if our court rules state that a magistrate must do it, certainly wouldn't it necessarily follow that the Attorney General should do it?

The Court: The Attorney General in the state protests that your argument is fallacious on the ground that they did exactly that.

Mr. Malandra: Say that he was entitled to counsel?

The Court: That they went out of their way to explain his rights to him, to say now be careful, Mr. Virtue, we [fol. 214] want you to know what the law of New Jersey is. If you don't testify, there can be a proceeding instituted against you whereby in all probability as far as you and your job is concerned, you're going to be hurt.

Mr. Malandra: Well, Your Honor please, what you're saying to me is that the Attorney General has very politely

informed him of his constitutional right by saying to him, look out now, there's a law which says you may get fired.

The Court: That's right.

Mr. Malandra: Well, Your Honor please, how about the look out, Mr. Officer, you may go to jail for conspiracy. Don't you weigh one against the other? Doesn't the defendant have a right to choose which way he should go? Does the Attorney General give him every law that pertains for police officers? He does not.

The Court: He doesn't have to.

Mr. Malandra: He doesn't have to give him this one, that's my argument. He doesn't have to give him this one. He's not obligated.

The Court: I didn't say that he was.

Mr. Malandra: This comes as a threat.

The Court: The facts to be considered by this court, see, again what you're attempting to construe is that he [fol. 215] must say this and he must say that and he must say the other thing. That is not the law.

Mr. Malandra: That is not what I'm saying, sir.

The Court: Let me finish. If my conclusions concerning that point are incorrect, you may argue me right out. But, as far as he is concerned, when I read the whole of the statement and you admitted yourself that every paragraph is to protect the defendant's rights, before he makes a statement, and that is why I read it, and even though you didn't admit that that was so, the court could have no difficulty arriving at that conclusion. Now, we come to the last paragraph and there is where we disagree. I don't think that the Attorney General is trying to put him in a position where he is threatening him with the loss of his job. This is the law. He has a right to exercise his constitutional rights, but he's saying now, you do have that right, but I also want to warn you that as far as you are concerned that if you refuse to answer, you then may be subject to a proceeding. He doesn't say if you don't answer, you're going to lose this and that, he doesn't say you shall be or you will be or you might be, because the answer is maybe

they will forget all about it and won't pay any attention to it, you see. Now, under the circumstances, you may be subject to a proceeding.

Mr. Malandra: And that is the threat because the law is not that you may be subject to a proceeding, you will be dismissed from the police department. You will be.

The Court: He doesn't say that.

[fol. 216] Mr. Malandra: That's the law, that particular law says not that you may be taken off the police force, you will be taken off the police force.

The Court: Provided it is proven, you could be. Suppose it isn't proven?

Mr. Malandra: Unquestionably. That's academic. If it's not proven, they can't do it. But, that doesn't say you may be, it says you will be.

The Court: Well, that is assuming that the proper proceeding was taken, the proofs are presented, and everything else.

Mr. Malandra: That's right. Now, what's that got to do with this saying to a man now you don't have to testify, you have that right, but if you do, you may be—

The Court: You don't have to testify, but as far as you are concerned, if you choose to rest purely upon your constitutional rights and refuse to testify, the law of New Jersey is—

Mr. Malandra: I would have no argument.

The Court: You get into something, which is definitely the law of New Jersey. In plain simple interpretation, it is that the law of New Jersey is that ignorance of the law excuses no one. Now, he's going out of the way to make sure that he is not ignorant of this particular proceeding, I venture to say right now, you go into this county and find many policemen that do not even know that such a law [fol. 217] exists. As far as some of them are concerned, they may say, well, the headaches and this, that and the other thing, I don't want any part of the job. They could have that right, and I wouldn't blame them right now.

Mr. Malandra: If the Attorney General had said to him, you can refuse, but there is a law in New Jersey which says that if you refuse, you then will be removed from the police department, I would say he was doing the man a favor, and giving him something to think about. But, he doesn't say that. He says if you refuse, you may be taken off. That, in my opinion, is a threat, not the law of New Jersey.

The Court: Where is that a threat, as far as the man is concerned. So he refuses. Take me, for example, on how many cases do I sit where right smack from the witness chair, day after day, hour after hour, pours forth torrents of legal perjury. In the seven years that I've been on the bench, once I ordered him held, a matter presented to the grand jury for a false swearing that he did on the stand. Now, every time I catch him really lying under oath, they may be, but by the same token, they may not be, you see. Now, that's what the Attorney General, he says, I don't know whether you will or whether you won't, under the law you can be, at least.

Mr. Malandra: If he had said that, we'd have a different situation.

The Court: State vs. Smith said he did not need any specific language. It's the thought behind what he did say that has to do with the voluntariness of his statement.

[fol. 218] Mr. Malandra: True, but that's not what we're saying. We're not arguing with the Smith case at all. What I'm saying to you, Your Honor—

The Court: No, I refuse to adopt the attitude that the Supreme Court doesn't know what they're talking about as long as I'm a judge.

Mr. Malandra: But I say to you, Your Honor, is that this was not an explanation on the part of the Attorney General, that if he refused or if he took the fifth amendment, that the law in New Jersey is that if you refuse as a police officer, you're subject to removal. That is the law.

The Court: Not what he said?

Mr. Malandra: That's not what he said, no. He said if you refused you may be removed by a subsequent proceeding.

The Court: All right, State vs. Smith says you do not need any particular language. So, you're saying he should have said you will be, a certain particular word, and I say that that is not the law of New Jersey. Most respectfully, of course, I do say that to you, Counselor.

Mr. Malandra: Well, Your Honor, I think that he should have related to the defendants that they have the right to counsel, that they could have gotten counsel if they wanted and this matter would have never taken place, but they're sitting there without counsel, and they're being told that if they do not cooperate, they will be fired. And, now, if [fol. 219] this doesn't put a man in a position where I'm damned if I do and damned if I don't, I don't know when he could be.

The Court: Do you have any case law to that effect, other than the present pronouncement?

Mr. Malandra: I would like an opportunity to look at it, sir. I haven't at this point.

The Court: All right, you can look at it, and as of the present time, we'll proceed with the further inquiry into the case, and we'll rule on it now, because here's another thing, the law happens to be this as far as confessions are concerned. This proceeding, here, is merely to waive the voluntariness of the confession from the standpoint of law. What I do, as far as this confession is concerned, is in no way binding upon the jury. As far as I am concerned, at this stage of the proceeding, if I say the confession is involuntary, it is my legal duty to throw out the confession and not permit any testimony concerning it. If I leave the confession in, and as a legal matter, all that it is, I am not permitted to tell the jury that I have so ruled. If I dare tell the jury that I have ruled, we immediately have reversible error. If I feel that it is legally admissible, then the same proceeding that we're going through now takes place in the presence of the jury. Without them knowing that we have had any talking about the confession at all.

If you noticed, when I told the jury, I referred to it merely as a legal step, I said nothing about statements, confessions, or anything else. Which under the law, I would have no right to do, at least in my interpretation of the law. Now, we go through the same proceeding that as far as the jury is concerned, they finally, after hearing all of the [fol. 220] facts and everything else, consider the confessions just the same as they would any other piece of evidence in the case, and attribute to the testimony of the witnesses the amount of credibility, or they can believe anything they're entitled to. And, by the same token, the first instruction they get in the charge when they go out or at least right in the beginning, they're informed that the first thing they should consider is the voluntariness of the confession, and if you find that it was voluntary, you may consider it not by itself, but merely as one piece of evidence together with all of the other evidence of the state, by the defendant, and by the state, and as a result of that, come to your conclusion as to the guilt or innocence of one or more of these defendants. Now, by the same token, if in first considering the confession, they feel that it was involuntary, they are immediately to discard the confession, to give no part of the confession any consideration as far as resolving the issue of the guilt or innocence of the defendant. By the same token, the judge in any step, during the case, even in this legal argument here, if he comes to the conclusion even though, in the very beginning he said that it was from a legal standpoint voluntary, he has likewise the legal obligation to himself, and then he may withdraw the confession to tell the jury to give no consideration to it, so that the rights of the defendant, as far as the statement is concerned, are protected right up to the very minute, practically, that they go into the jury room, and even after they go into the jury room to deliberate. So, that is of the present time, my feeling is that we should proceed further in the matter, and I would consider it together with all of the other evidence that is presented at this hearing, purely legal in nature, and then

at the end, render a decision as to its voluntariness from the standpoint of the law, which, of course, is the only [fol. 221] purpose of the present proceeding. All right, now, we partially disposed of that, so let us now continue.

Mr. Malandra: If Your Honor please, may I make this suggestion, the newspapers are here now, and you will probably be reading your statement in tomorrow's paper—

The Court: Well now, we were talking about a voluntary or unvoluntary statement. Now, let's keep the record straight, as far as the newspapers are concerned, I was going to say this another way, newspaper fellows have a job, the same as you or I. I know of many many instances where a story has been phoned in by the newspaper man, and when he reads his story in the newspaper, he doesn't even recognize it. You know, in all newspapers, there are rewrite men, and I can assure you that if after reading the rewritten story by the rewrite man, if some of the reporters gave advent to their true feeling, they would feel that justifiable homicide would be proper as far as the rewrite man is concerned. On the whole, we all make mistakes, I know those two long legged gentlemen, these two reporters over here, and within reason, I don't think they try to slant either way, and may I say of my own knowledge, I know that they are both personal friends of yours, and if they had any desire to slant, I think the wind up would blow toward the Malandras' rather than the Aikens' Haddenfield mansion, believe me. Enough for the newspaper men. Continue.

By Mr. Aiken:

Q. Now, Mr. Garifo, what was the answer Mr. Virtue gave after the statement by Mr. Rigg?

[fol. 222] A. The answer was, "Right".

Mr. Malandra: Does he mean by that, Your Honor please, yes, right Mr. Attorney General, I know about the law, or yes, you're right, Mr. Attorney General, I'm going

to cooperate or, right you are, Mr. Attorney General, I heard.

The Court: May I say that is one of the duties and the obligations of the jury to consider, together with all the other factual issues when arriving at that final conclusion concerning the voluntariness of this piece of paper. I assure you the court will make the greatest effort to be fair and reasonable as far as the interpretation is concerned. I am the umpire between the State of New Jersey with the Prosecutor's office aided and abetted by Mr. Aiken of the Attorney General's office, and a renowned criminal lawyer, which is you.

By Mr. Aiken:

Q. Now, after Mr. Virtue said right, did Mr. Rigg continue with the questioning or did Mr. Virtue answer those questions?

A. Yes.

Q. And during the subsequent questions and answers, were there any threats or intimidations of any kind made by anyone to the defendant?

The Court: Sustain the objection. The court will decide that. Ask him, did this or did that or did the other thing happen, and then the court concludes. You're asking him to conclude that there were no threats or this or that or [fol. 223] the other. What may be in his opinion, a threat may in my opinion, not be a threat. Be more specific. Give me the facts and let me do the concluding because that's what I have to do as far as threats and promises and duress.

By Mr. Aiken:

Q. Well, who was present during the questioning, Mr. Garifo, besides Mr. Virtue?

A. Mr. Rigg and myself.

Q. What happened of any nature, other than the asking of questions and the answers, anything?

A. As far as my participation, I just reported the questions and the answers.

Q. Did you see or hear anything of an unusual nature?

Mr. Malandra: I object.

The Court: I'll permit that.

A. No sir.

The Court: What you consider to be unusual.

The Witness: No sir.

The Court: Screaming, hollering, arguing, anything like that?

The Witness: No sir.

Q. Did the defendant make any complaints about how he was being treated?

[fol. 224] A. No sir.

Q. Did he express any concern about his physical condition or anything of that nature?

A. No sir.

Q. Did he indicate that he didn't want to go on with the questioning for any reason?

A. No sir.

Q. Now, at the conclusion of the questioning by Mr. Rigg, I notice there are two questions that relate to anything that he wanted to add. Would you read those two questions and answers starting here on the page 130, at the bottom, the last question.

A. "Question, this date, is there anything you'd like to add what we have gone over this morning?" "Answer, I don't think there is much to explain, Mr. Rigg, you have the summonses. They were down-graded and it is true. There were no personal gains, if that is what I have implied you to more or less put to me a couple times. As I said, it was done for friendship or feeling sorry for somebody. That is about it."

Q. Is there a question before that, Mr. Garifo, that relates to something he wanted to add?

A. That's the only answer he gave. The question was that I read, and that was his answer.

Q. Now, did you notice during this question, anything of an unusual nature about his mental or physical condition during the questioning?

A. No sir.

Q. I think that's all, Your Honor.

[fol. 225] Cross examination.

By Mr. Malandra:

Q. Mr. Garifo, let me ask you something. When you're taking this testimony, like this, on question and answers, are you more interested in the words that are being spoken than the actions of the people in the room?

A. That's right.

Q. You're interested in the words that come out, is that right?

The Court: I think we can straighten out that point, if we ask Mr. Garifo this. The theory of stenotype in taking down whatever is being said, what is it as far as the fingers are concerned and as far as the mind is concerned. Maybe I can make it more clear. I start to dictate to you until such time as you read that dictation back, you don't even know what I've said, is that correct, isn't it transcribed into the fingers first?

The Witness: That's right, sir, I can't memorize what I reported.

The Court: So he doesn't even know what he has said until he has an opportunity to read it back. The fingers automatically hit whatever signs or anything else are necessary. Now, when you say to him repeat that question and answer, then for the first time, you know what the dictators have said, is that correct?

The Witness: To read it back verbatim, I'd have to read it back to the notes.

[fol. 226] The Court: He may have some slight thought, but that's it. That's why you will see a stenographer a little bit hesitant when she's reading it back because this is the

first time she fully realizes and understands what has been said, is that a correct interpretation?

The Witness: That's true.

The Court: Now, that straightened out on that point.

By Mr. Malandra:

Q. Now, you have confused me. That's not what I had asked him in the beginning.

The Court: Well, I have to tell you now, I think I better excuse this jury for three days, it looks like we're going to be on the statement that long, if we're going to go through all of this.

Q. Didn't you, at any time, Mr. Garifo, feel that Mr. Rigg was pressing this witness?

A. No sir.

Q. Never thought so?

A. No sir.

Q. That's all.

The Court: Now, is there any further necessity for the appearance of Mr. Garifo?

Mr. Aiken: Yes, Your Honor, we've got the other two statements. He took all three in this book.

[fol. 227] The Court: O. K., I'll reserve decision on the voluntariness or involuntariness as of his testimony. Of course, you will have other testimony that you likewise, but is this the only witness you're going to put on?

Mr. Aiken: No, I have another witness, Your Honor, Mr. Rigg.

The Court: Supposing we do it this way, so that we don't get confused. We're all done with Garifo and then you put on your next witness.

Mr. Aiken: Right. Now, will you turn to Mrs. Naglee's testimony.

The Court: No, no. Either handle one at a time, because I'll rule on one at a time, you may step down as soon as they give you the right to get out of here, you can go.

Get rid of everything as far as the voluntariness of the statement is concerned.

(Witness excused.)

[fol. 228] BUDD M. RIGG, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Mr. Rigg, I understand that on the day the statements in question were taken, you were then an acting Attorney General?

A. Deputy Attorney General.

Q. And you had made a point in that capacity in order to assist in the conducting of the investigation relating to the ticket alterations in the Borough of Bellmawr?

A. No, I was serving and had been serving prior to thereto as a Deputy Attorney General. This was one of the assignments which I had as a Deputy.

Q. And by what authority were you delegated to conduct this investigation?

A. It was by order of the Supreme Court.

Q. Do you recall the date of the order of the Supreme Court?

A. As I recall, it was June 30, 1961.

Q. And did you take these statements we have been talking about in accordance with your duties under that order?

A. Yes I did.

Q. Now, will you tell us on the date you took the statement, what time you arrived at the Borough of Bellmawr?

A. It was approximately nine o'clock or shortly thereafter.

Q. And had anything of a preliminary nature been said [fol. 229] or done in relation to the defendants concerning these statements?

A. Yes, the statements were originally sent up for taking during the last week of October. Arrangements were made directly between me and Chief Garrity for the taking of the statements, and then just prior by two or three days to the date which had been designated there were adjourned by me until November 10th. Chief Garrity was to make the arrangements for a place for us to convene for the taking of the statements, and made those arrangements with the fire department. He provided a room and furniture in the room for the taking of the statements.

Q. And, when you arrived at Bellmawr the morning the statements were taken, when did you first see any of the defendants and where were they and what were their conditions?

A. Well, physically, there is the Municipal Building, separated from the Fire Hall by a parking lot. I parked in the parking lot, went into the Municipal Building, into the police station, into the Chief's office, I saw Chief Garrity and Mr. Garifo. We then, and I can't recall whether the three of us proceeded to the fire hall or whether Chief Garrity took me to the Fire Hall alone, to show me the room but in any event, he showed me the room and then we set up the stenotype machine and proceeded.

Q. And in connection with Mr. Virtue's statement, you gave him the warning that we have already here discussed?

A. Yes I did.

Q. Rather than the statement of rights?

A. I did.

Q. And he indicated his assent to continue under the conditions that you outlined to him?

A. Yes.

[fol. 230] Q. And you did continue with the questioning. Now, will you tell us what if anything occurred during the questioning and what you can remember of Mr. Virtue's physical and mental condition.

A. Nothing unusual occurred during the questioning. So far as his physical condition was concerned, it was nothing untoward. He was somewhat nervous as we get into certain

areas of the questioning, but other than that, it was nothing.

Q. He didn't indicate at any time that he was physically or mentally unable to go through with the questioning or that he wanted to stop it or anything of that nature?

A. Absolutely not.

Q. And I take it from what Mr. Garifo has already testified to that at the end of the statement, you asked him if he had anything else to add and he did add something, is that correct?

A. That is correct.

Q. That's all.

Cross examination.

By Mr. Malandra:

Q. Now, Mr. Rigg, you were Deputy Attorney General in charge of investigations by order of the Supreme Court, is that right?

A. That is correct.

Q. And you were down there as an inquisitor, right?

A. As an investigator—

Mr. Aiken: I object.

The Court: The court understands. Some people think [fol. 231] they're synonymous. The court is hearing this without the jury, so I'll permit it.

Q. You were there to gather evidence against the people that the Supreme Court had asked you to go gather, isn't that right?

A. The Supreme Court order, as I recall it, I don't have it before me, but directed the Attorney General's office to conduct an investigation into certain alleged irregularities in the conduct of the Municipal Court, and motor vehicle summonses therein, as well as officials connected therewith.

Q. You went down there to find out if the law had been violated, weren't you down there for that reason?

A. Absolutely.

Q. And you were down there to find out that if the law was violated, you were to apprehend those that violated the law, isn't that so?

A. No.

Q. Well, isn't that what an investigation is for?

A. No, I had no power of arrest.

Q. Well, ultimately, that's what happened, isn't it?

A. I didn't arrest anyone, no.

The Court: When you say apprehend, he means that he physically—

Mr. Malandra: No, I don't mean to arrest them, I mean you were down there to get enough evidence so that they could be charged with these offenses, if they had committed them.

The Witness: If such evidence existed, yes.

[fol. 232] Q. You were down there looking into the situation, looking for violations, were you not?

A. Yes.

Q. And weren't all of the defendants apprised of the fact that you were there for the purpose of finding something on them?

A. Yes.

Q. So that they didn't think you were down there as their benefactor, did they?

A. I think not.

Q. And, under these circumstances, you quizzed them for hours on November 10, 1950, is that right?

Mr. Aiken: We're only talking about Mr. Virtue at the moment.

Mr. Malandra: We're talking about Mr. Virtue, yes.

The Witness: Mr. Virtue, I could not say that was hours, no.

Q. Can you say how long it would take?

A. I can say this, the best answer I can give you there was that there were six parties questioned, we started proceeding approximately 9:30 or quarter of ten, and as I re-

call, we stopped at 3:30 or four o'clock, because Mr. Garifo had a personal problem and it was intended to be continued at a future time.

Q. Now, you asked them questions, did you not?

A. Yes.

Q. They didn't just come in and give you voluntary statements as to what had transpired?

A. On November 10th?

[fol. 233] Q. On November 10th.

A. No.

Q. You questioned them?

A. That is correct.

Q. You asked them questions and they had to answer them.

A. If they so desired, yes.

Q. Well, you said they had to be checked off the police force if they didn't, didn't you?

A. I did not.

Q. Why did you tell them at the beginning that if they did refuse, they may be chased off the police force?

A. Because they might have been.

Q. That's right?

A. Yes.

Q. So they either had to answer or get chased off, isn't that so?

A. I did not say that.

Q. Well now, you didn't just say to them just because you like to hear yourself talk?

A. No.

Q. You told them that because you wanted to apprise them of the facts.

A. That's correct.

Q. That if they refused, they may be chased off the police force.

A. That's correct.

Q. Now, did they ever sign any of these statements?

A. No, not these statements.

Q. These statements were never signed by any of the defendants?

A. That's correct.

Q. It was a question and answer situation, was it not?

[fol. 234] A. Yes.

Q. Were you in the role of prosecutor?

A. Investigator.

Q. And as prosecutor, was it not—

The Court: He said investigator.

Q. Now, weren't you supposed to investigate this and then prosecute it?

A. No.

Q. Well now, when did you know that the prosecutor's office was going to have this?

A. When I was fairly certain that the offenses were in fact committed. Then I knew that the Prosecutor's office would ultimately have it.

Q. Well, as a matter of fact, you never knew the Prosecutor's office was going to have this at all until after they got it?

A. I did.

Q. Didn't you leave the Attorney General's before the Prosecutor got this case?

A. Before they actually had the case.

Q. That's right, so that you were out of the services when the Prosecutors of Camden County got this case.

A. Not when the determination of it was to be turned over to it.

Q. Well, as I understand it, it was rather late in 1961 when the Prosecutor of Camden County was apprised that it would be turned over to him, isn't that so?

A. I don't know when he was apprised.

Q. You were no longer in the employ?

A. I don't know when he was apprised.

[fol. 235] Mr. Aiken: I object on the basis that it's completely irrelevant and immaterial.

The Court: Overrule the objection. The court has considerable latitude. I kind of understand Mr. Rigg's position. May I say that I am fully acquainted with the facts that he decided he wanted to disassociate himself with the Prosecutor's office for his own reason. Maybe he showed good sense in getting out of there, so that as far as we are concerned, however, it could be considered shall we say if the issue of credibility and alike, but I will allow it. There is no jury here. I don't think much harm can be done.

The Witness: To clarify it, may I say, as I recall, I was associated with the Prosecutor's office or the Attorney General's office, until I think it was July or August, '62, not late '61.

Q. And this went to the Prosecutor's office in late November, '62?

A. Well, I was no longer in the Attorney General's office then.

Q. So that you couldn't know when you left in August that it was going to the Prosecutor's office in November, three or four months after you left?

A. I knew prior to my leaving in August.

Q. You knew prior?

A. Yes.

Q. May I ask you how you knew prior?

A. Because it was determined by my superiors that if criminal acts be discovered with participants identified, that it would be turned over to the Prosecutor's office for prosecution of criminal charges, as opposed to rule viola-
[fol. 236] tion, which would be handled by the Supreme Court.

Q. How do you know that your superior officers made that decision?

A. We discussed it.

Q. When?

A. Prior to my leaving.

Q. That would be before August of '62?

A. That's correct.

Q. And would it surprise you if I told you that the first time that the Prosecutor's office heard about this matter that they were going to handle it was in late November of '62?

A. No, probably the final report was completed around then.

Q. You never made a report?

A. I never made a report, correct.

Q. That's right, so that you didn't know this was going to the Prosecutor's office at all.

A. Well, I have answered you, I knew that it would be.

The Court: He said as far as he was concerned, Mr. Malandra, he sat down at one time with some of his superiors and to the best of his knowledge and understanding, he recollects the decision was then made that if further prosecution was necessary as a result of his investigations or as part of his investigation, that the matter of prosecution would be turned over to the local prosecutor's office, rather than have it retained by the Attorney General.

Q. Now, wasn't it determined after or on November 10th, 1961, now that's seven months before you left or eight months before you left, wasn't it determined then that there would be some criminal action in this case?

[fol. 237] A. Yes.

Q. Now, you say that they waited from November 10th, of 1961, until November of '62 before they sent to the Prosecutor's office?

A. You said that, I don't know when they sent it to the Prosecutor's office.

Q. You said they left there in August?

A. That's correct.

Q. And you said as soon as it was determined that there was some criminal acts it would be turned over to the Prosecutor's office?

The Court: May I try to straighten this out. May I ask you this question, do you know when the investigation was finally completed or terminated?

The Witness: No.

The Court: Let me ask you another question. Was the investigation terminated as far as you know when you resigned from the Attorney General's office?

The Witness: No, it was not.

The Court: In other words, somebody else then continued the investigation where you left off?

The Witness: Compilation of the investigation, yes.

Q. Now, as I understand it, November 10th, after you took these statements on November 10th, that you then decided that there were some criminal acts here, that this thing just stayed dormant until December 4, of '62.

[fol. 238] Mr. Aiken: I want to renew my objection.

The Court: Mr. Malandra, it is rather obvious to the court what happened is this. Mr. Rigg is sent down there from the Attorney General's office from the very beginning, I don't think he went down there looking for trouble, he went down there honestly as an attorney and I think we both recognize him as a capable lawyer, to investigate and if he found anything that he construed to be as far as alterations or anything else, as far as the situation is concerned, pertaining to this general charge or general suspicion or as far as this thing is concerned, he then turned over the results of the investigation to superiors. He is not the Attorney General.

Mr. Malandra: That's not what this man said.

The Court: This is what I'm going to rule on and we're getting too far from the main point. You see, as far as we're concerned all of this is immaterial and irrelevant. We're not interested in what he did. He finished up and what he did and then they got out. Let's stop being ridiculous.

Mr. Malandra: I agree with what you are saying, except one thing, that there is a bad gap here, a very bad gap.

The Court: I shall rule that any further questions in this matter is out of line. A man has a right to quit when he did, it has nothing to do with the case. Continue.

Mr. Malandra: I have no further questions.
[fol. 239] The Court: You may step down.

(Witness excused.)

Mr. Aiken: Now, I would urge the court to admit the statement of Mr. Virtue as a matter of law.

The Court: The court will reserve decision on that whose thing until I dispose of the three of them, which is likewise my legal right. Proceed with the next.

Lawrence Garifo, having already been sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. On the same day I understand you took the statement of Mrs. Naglee?

A. That's right.

Q. And her statement was taken in the same room and with the same persons present during the questioning as they were with the case of Mr. Virtue?

A. Yes.

Q. And was generally the same questioning of Mrs. Naglee conducted in approximately the same manner?

A. Yes.

Q. And was she given a statement of her rights by Mr. Rigg?

A. Yes.

[fol. 240] Q. And what was that statement?

A. You want me to read it?

Q. Yes please.

A. "Question, Mrs. Naglee, as you know I am working under a Supreme Court order dated this last June whereby or whereunder I am directed to conduct an investigation of certain irregularities in the handling of motor vehicle

cases in the Municipal Court, and apparently the police department here in the Borough of Bellmawr, and it is pursuant to that order that I have asked you to answer some questions which I want to put to you. Before you do, however, I want you to be fully aware of the fact that anything you say must be voluntary and of your own free will and accord without any threat, promises or reward or any coercion. You do have a privilege to refuse to make any disclosures or give any answers which tend to incriminate you. Things that you tell me today may be used against you or any other person in a subsequent criminal proceeding. That is why you have that privilege under the law. However, if you do answer a question and make a disclosure, by so doing you thereby waive this right or privilege that you have in relation to the entire investigation. You understand that? Answer, I do."

Q. Now, after her assent to continue with the questioning, did she continue and answer the questions?

A. Yes sir.

Q. And did anything of an unusual nature occur during her questioning by Mr. Rigg as far as you can recall?

A. Well, it's not in the record, I don't believe, but prior to Mrs. Naglee entering the room, there was some discussion about a heart condition, I believe, and she was assured by Mr. Rigg that he would proceed for her conve- [fol. 241] nience and if she ever felt the necessity to call a time out or anything, to let him know.

Q. And did she, as far as you can recall, indicate that she wanted to stop temporarily or permanently because of her physical or her mental condition?

A. If anything happened, they might have stopped just for a glass of water, that's probably the only thing that happened.

Q. Now, will you turn to the end of Mrs. Naglee's statement and see if Mr. Rigg asked her if she wanted to add anything or anything of that nature.

A. Well, at the end of her statement, Mr. Rigg said "So far as the questioning is concerned, that will be all. I want to question you again, but it will be sometime later."

Q. Did she make any remark in that connection?
A. No sir. Then it just ended.

The Court: May I ask you this, as I understand it, Mr. Rigg was apprised of the fact that she did suffer from some type of a heart condition, is that correct, before any questioning or anything else began, is that right?

The Witness: Yes sir.

The Court: And then, as I understand your testimony, you said you heard him notify her that if she felt any distress or anything else or words to that effect that she was to draw it to his attention immediately so that possibly an illness or sudden emergency or anything else having to do with any involvement of the heart should be taken care of immediately.

The Witness: Yes sir.

[fol. 242] Q. Now, during the time Mrs. Naglee was being questioned, is there anything that you personally observed that would lead you to believe that she was suffering discomfort of any description whatsoever?

A. Well, just from my observation, there was a lot of hesitancy in the questions and answers. It wasn't a difficult interrogation and answer period to report by reason of the slowness of the answers and whether I call it nervousness, somebody would call it something else.

The Court: Well, that gives me the general impression.

Cross examination.

By Mr. Malandra:

Q. Mr. Garifo, was the same statement made to Mrs. Naglee as was made to Detective Virtue by refusing to answer she may be subject to a proceeding removing her from the department?

Mr. Aiken: Both statements are in the record. He read them both.

The Court: Overrule the objection. This is cross-examination and you may answer.

A. All I can say, sir, verbatim the two statements were different. I mean verbatim, they are not the same.

Q. There is nothing in that original statement made by Rigg to Mrs. Naglee which says that if she refuses to tes-
[fol. 243] tify, she may be subject to a proceeding by removing her as clerk, you didn't hear that?

A. No, I did not hear those words.

Q. It's not down there?

A. No, it's not in here.

The Court: He didn't say it either, did he?

The Witness: He did not say those words.

Mr. Malandra: That's all.

(Witness excused.)

Budd M. Rigg, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Now, Mr. Rigg, I take it that you conducted—

Mr. Malandra: Your Honor, I make the same motion toward Mrs. Naglee's statement as I did toward Mr. Virtue.

The Court: That's all right, you gave a general exception at the whole works, renew any and all motions and I will rule on any and all motions.

[fol. 244] Q. Mr. Rigg, I take it that you conducted the questioning of Mrs. Naglee on the same day and at least in approximately the same manner that you conducted Mr. Virtue's questioning?

A. Yes.

Q. Apparently there was one difference, in relation to Mrs. Naglee's physical condition, can you tell us about that?

A. Yes. Chief Garrity had indicated to me that Mrs. Naglee had in the past had a heart attack or a general heart condition, and that she was easily upset and to be very careful when I talked with her, and I confirmed this at the outset before we commenced the questioning with her and she affirmed and as a result I did not press as hard as I might have.

Q. And, what did you indicate to her to do if she felt any distress in connection with her physical or mental condition?

A. I told her to bring it to my attention immediately and we would stop.

Q. In any time during the questioning, did she indicate she was suffering any kind of distress from her heart condition?

A. No.

Q. And approximately as far as you can tell, how long did the questioning take?

A. I would say approximately three-quarters of an hour.

Q. Three-quarters of an hour?

A. Maybe an hour.

Q. And if you recall stopping the questioning to get a drink of water, take a rest, or anything of that nature?

A. I don't recall that, no.

Q. And did you note the hesitancy that Mr. Garifo mentioned?

[fol. 245] A. Yes.

Q. And was there anything else of an unusual nature that you noticed in connection with Mrs. Naglee's condition?

A. No, just in relation to certain questions, there was a hesitation.

Q. And she didn't indicate that she was in distress of any kind?

A. No.

Q. All right. Cross-examination.

The Court: You mean distress of any kind attributable to some kind of heart trouble, that's what you mean? I mean obviously there was some hesitancy in the answers attributable to her nervousness but there was nothing that you observed that you attributed to this type of a heart involvement, is that correct?

The Witness: That's correct.

Cross examination.

By Mr. Malandra:

Q. Why didn't you apprise Mrs. Naglee of that law that says if she refused to testify, that she may be removed from office?

A. Very frankly, it didn't occur to me at the time. I was thinking in terms of these police officers.

Q. So, at the time you gave it to Virtue, it occurred to you, you were then giving him the benefit of your knowledge and protecting him, it just didn't occur to you?

A. That's not correct.

Q. Isn't that what you just said?

[fol. 246] A. No, that's not correct. The reason that I was concerned with relation to these police officers is that during the course of this investigation, another police department was involved, and another police officer specifically was involved in this statute was brought to my attention as a result of that involvement, and I had been apprised of the statute in relation to police officers, and that's why it occurred to me, when I questioned these officers, as I did in other municipalities and not in relation to the clerk.

Q. Doesn't the same act also say elected and appointed clerk?

A. It does.

Q. That's all.

The Court: Wait a minute, what is this business about pressing, ask that question and then quit because if you're not going to call him back and ask him what he meant by the pressing business.

Mr. Malandra: Your Honor, I'd be very happy to have you ask him that.

The Court: Well, I refuse to do it at this time. Are you finished with the witness?

Mr. Malandra: Yes.

Mr. Aiken: Yes.

The Court: You are excused.

(Witness excused.)

[fol. 247] LAWRENCE GARIFO, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Larry, you also took Chief Garrity's statement the same day?

A. I believe, yes.

Q. And I think he was the last one whose statement of the six that you took that day, is that correct?

A. That's right.

Q. And I assume Mr. Rigg conducted that questioning similar to the questioning of the other two defendants?

A. Yes.

Q. And was Chief Garrity given a warning or a statement of his rights by Mr. Rigg and if so, what was it?

A. Yes, he was. It reads as follows: "Question, Before I get started, because of the lateness of the hour and other commitments, I will undoubtedly have to question you again as well as Mrs. Naglee and perhaps one or two of the other officers. I would just like to establish a few things here quickly now. Before I do, however, you and I are aware of the purpose of the investigation of your being here today. Before I ask you any questions concerning this investigation into the alleged irregularities of the handling of municipal traffic violations in your department,

I want to advise you that anything you say must be said of your own free will and accord without any threats or promises or coercion, and anything you say may be, of course, used against you or any other person in any sub-
[fol. 248] sequent criminal proceedings in the course of our State. You do have under our laws, as you probably know, a privilege to refuse to make any disclosure which may tend to incriminate you. If you make a disclosure with knowledge of this right or privilege, voluntarily, you thereby waive that right or privilege, in relation to any other questions which I might put to you relevant to such disclosure and this investigation. This right or privilege which you have is somewhat limited to the extent that you as a police officer under the laws of our state, may be subjected to a proceeding to have you removed from office if you refuse to answer a question put to you under oath pertaining to your office or to your function within that office. It doesn't mean, however, you can't exercise the right. You do have the right. Answer, No, I will cooperate."

Q. All right, now, during the course of the questioning of Chief Garrity, did anything of an unusual nature occur?

A. No sir.

Q. As far as you know, did you notice anything unusual about his physical or mental condition?

A. No sir.

Q. Did he make any complaints of any kind relating to his mental or physical condition?

A. No sir.

Q. Did he object in any way to the conduct of the questioning, if you know?

A. If he did, it's in the record.

Q. And, if he did, you don't recollect it of your own recollection?

A. No sir.

The Court: Without going through a lot of papers, he said if he did, it's in the record.

[fol. 249] Q. And, do you recall or would you check and see whether or not at the end Mr. Rigg asked him if he had anything to add or anything of that nature?

A. No, the last thing Mr. Rigg said was, "Suppose we break now and we will have to go on further, Ed."

Q. That's all.

Mr. Malandra: I have no questions.

The Court: You may step down.

(Witness excused.)

Budd M. Rigg, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. You conducted the questioning of Chief Garrity the same day, and you gave him the warning that Mr. Garifo read from the transcript?

A. That's correct.

Q. And in the morning when you arrived, as I understood it, that you even set up the room and made the arrangements for the questioning to be conducted?

A. Yes, he did.

Q. Do you know where he was during the time between the commencement of the questioning with whoever was first to the time you actually started questioning him?

[fol. 250] A. As far as I know, he was in the police station.

Q. And when you were ready for him, you called him in?

A. Yes, each witness, as I would conclude with each witness, I would tell that particular person whom I wanted to question next.

Q. I see. And, when he came in before you started on the record, did you have any conversation with him, do you recall, of any significance?

A. Yes, as a matter of fact, his case was different from the others. I had recessed after questioning Mrs. Naglee. And, I had gone back to the police station with her to obtain certain data which she told me was in custody there and as I recall, Chief Garrity then walked back from the police station with me and we were discussing this data which I had obtained at that time in my possession.

Q. And, at any time before you started the questioning, did he indicate any reluctance of any kind for any reason to go along with the questioning?

A. No, as a matter of fact quite the contrary. He indicated that provisions had been made for him to have counsel.

Q. What?

A. Provisions had been made for him to have an attorney represent him, but he didn't feel at that point it was necessary.

Q. Did he show any reluctance of any kind after you gave him a warning and you started to question him?

A. Absolutely not.

Q. And did he exhibit any unusual mental or physical signs during the questioning?

A. After we got started, nothing other than nervousness.

Q. Did he complain to the conduct of questioning in any way?

[fol. 251] A. No.

Q. That's all.

Cross examination.

By Mr. Malandra:

Q. Now, Mr. Rigg, while you were apprising him of his constitutional rights I notice that you went a little further in the chief's case than you did in Mr. Virtue.

Mr. Aiken: I object.

The Court: Overrule the objection.

Q. And there, you said you quoted the law to him, that if he refused to testify that there could be a proceeding removing him and then you added that it doesn't mean, however, you can't exercise the right, you do have that right, and he answered, no, I will cooperate.

A. Yes.

Q. Did you get from that that he was choosing between cooperating with you or standing against a proceeding to remove him from office?

A. Frankly, no, I did not get that impression.

Q. That's all.

Mr. Aiken: I don't understand what impression you're referring to, Mr. Rigg.

A. Well, as I understand the question, the question was did I get from this answer, no, I will cooperate, an impression that he was choosing between answering my questions [fol. 252] or losing the job, and my answer was I did not get that impression that he was making such a choice.

COLLOQUY

The Court: Gentlemen, we have reached the magic hour of four o'clock, and of course, time to adjourn for the day. At this time, court stands adjourned until quarter of ten tomorrow morning. Now, I do not in any way want to limit counsel to examination or cross-examination as far as this or any other of the statements are concerned, because this is a very important part of the case. So, the court feels extremely desirous of being enlightened as to all of the facts and circumstances surrounding it, but I want to make what I conceive to be as far as the admission of this statement from a legal standpoint is concerned. Tomorrow morning, quarter of ten, the same room. I have given word that the jury is being told not to come in until two o'clock because at the speed we're going, two o'clock seems a safe time to come back and proceed with the other facts in the case. We stand adjourned therefore until quarter of ten tomorrow morning.

May 3rd, 1963,
Camden, New Jersey.

The Court: Now, gentlemen, where were we yesterday?

Mr. Aiken: Your Honor, I had just finished with all my witnesses in relation to the statements taken by Mr. Rigg. [fol. 253] Did you have anything else on some cross-examination, Mr. Malandra?

Mr. Malandra: No, I did not. I was all through.

The Court: All right.

Mr. Aiken: You were through all of my witnesses. I have no further witnesses in relation to the statement.

The Court: Well now, gentlemen, I think to avoid any confusion that is why I suggested to do it this way. We only have the three witnesses anyway, so then we have the state side of the case, I did anticipate it would be somewhat similar to the way the testimony went in, there isn't too much difference or variation in the testimony of either Mr. Garifo or Mr. Rigg from the standpoint of the state's case. So, I think under the circumstances then, we can follow the same procedure with Virtue first and then Mrs. Naglee and Chief Garrity on each of them, any testimony they want to put in contrary to that presented by the state, and then of course at the end of that, I will rule on all of it.

Mr. Malandra: It was my understanding we were going to continue on with these other statements, Prosecutor.

The Court: Well, it's entirely up to the court. I have no preference one way or the other.

Mr. Malandra: It was my understanding that he was [fol. 254] going to go on with the other statements that were taken by the Prosecutor.

The Court: I'll be guided by whatever you gentlemen want to do because the whole thing is legal anyway. The only reason I put it this way, I thought it would be less confusing. I anticipated that as far as this thing is concerned about Mr. Rigg took these statements, that is approach to each of the three witnesses would be approximately the same. Obviously there would be some minor

variations. We would expect that he is saying something and then he wouldn't necessarily say it the same, because he wasn't reading the information. First, it was said one way, see, it's easily the same thought he might use different wording, something like that, and of course that's the way that it worked out. Now, as far as I was concerned, my thought was that at the end of the three, the state rests as far as their part of this is, from a legal standpoint, and then you could come if you want, but if you prefer to do it the other way, I don't care.

Mr. Malandra: My only thought was that we may as well get it all on all the statements and then so we can get that all otherwise we have got to go back over it again.

The Court: All right, Mr. Aiken says we have no objection, so supposing we send for Mr. Kaplan.

Mr. Aiken: Well, I can start with Mr. Garifo.

The Court: All right, go ahead.

[fol. 255] Lawrence Garifo, having been first duly sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Mr. Garifo, I think we all know who you are and it isn't necessary to establish your qualifications.

The Court: I think we can stipulate that as far as Mr. Garifo is concerned, he is a certified court stenographer and that at that particular time, you were actively engaged in the courts here in Camden County as a certified court stenographer, is that correct?

The Witness: Not at the time of these statements.

The Court: In other words, you had left by this time then?

The Witness: Yes.

The Court: Well, you originally were a certified court stenographer connected through the state and court located in Camden County.

The Witness: Yes.

The Court: And subsequent to some period of service, you did resign and become interested in some outside activities, is that correct?

[fol. 256] The Witness: Yes.

The Court: When was that?

The Witness: February 1, 1962, I resigned.

The Court: Well, you still are, however, a certified court stenographer of the state of New Jersey.

The Witness: Yes.

The Court: Is there anything else, Mr. Malandra?

Mr. Malandra: No.

The Court: All right, proceed.

By Mr. Aiken:

Q. Mr. Garifo, I show you three separate statements, the first dated December 4, 1962, where the witness was Edward J. Garrity, the second is dated December 5, 1962, where the witness was Helen B. Naglee, and the third is December 7, 1962, where the witness was Edward Virtue and I ask you which of those statements you took as a certified court reporter.

A. I reported the entire statement of Chief Garrity.

Q. All right.

A. I had nothing to do with Mr. Virtue, and I reported a portion of Mrs. Naglee.

Q. Is there any way of telling which portion you reported of Mrs. Naglee's and which was reported by some other stenographer?

A. Yes. In Mrs. Naglee's, I reported from page 58 on.

[fol. 257] The Court: Was that on a different day and everything?

The Witness: No sir. Mr. Albert had been in the Prosecutor's office all day, and I relieved him at approximately 4:30. In other words, he was getting tired.

The Court: In other words, this was a continuation of the same inquiry that was being made in the Prosecutor's

office, but the stenographer stopped and you took over in place of him.

The Witness: That's right.

The Court: It was a continuous statement, I mean by that at one particular time, that all you did is he stepped up and you sat down and continued with the statement?

The Witness: That's right.

By Mr. Aiken:

Q. Mr. Garifo, in relation to the statement of Mr. Garrity, can you tell us who was present during the period of time that it was taken?

The Court: Give us a date here first.

A. The statement was taken Tuesday evening, December 4, 1962.

Q. And who was present?

A. Mr. Sidney Kaplan, Assistant Prosecutor of the County of Camden, Mr. John F. Corbin, Sergeant of the [fol. 258] New Jersey State Police, Captain Philip J. Large, Camden County Detective Bureau, Mr. Garrity, and myself.

Q. Now, prior to the commencement of taking of the statement, did you have a conversation with Mr. Garrity of any kind, if you recall?

A. No sir.

Q. Now, prior to him answering certain questions relating to matters involved in this trial, was he given any kind of a statement of his rights by anyone?

A. If it's on the record.

Q. Is there anything of that nature on the record and if so, will you read it to us and tell us who gave that statement of rights?

A. Yes. It was given by Mr. Kaplan. It reads as follows:

"Question, Chief Garrity, of course, the background of this is the idea that in Bellmawr there was a policy or practice of what is commonly known as fixing tickets, which meant altering or changing traffic tickets, and I believe that you are familiar with the fact that that is something that has

been suggested. Now, I would like to go over these. Before we go on, I explain to you that we are working a Supreme Court order dated last June directing originally the Attorney General to investigate the Municipal Court in Bellmawr, and now it has been referred to the Prosecutor of Camden County for further investigation, to supply facts that were not obtained by Mr. Rigg in his capacity as Deputy Attorney General concerning irregularities in the handling of motor vehicle matters. There are some questions we wanted to ask you and before I do, I want to advise you that anything you say must be voluntary, of your own free will and accord, without any threats, promise or coercion. Anything you say may be used against you or any person in any subsequent proceeding in the courts of our State. [fol. 259] You do have the privilege under our laws to refuse to make any disclosures which you feel may tend to incriminate you. Now, shall be proceed? Answer, yes."

Mr. Malandra: Now, if Your Honor please, I once again would like to renew the motion I made earlier yesterday concerning the statement taken by Mr. Rigg in Bellmawr on November 10, 1961. Now, I make the same objection on the ground, may it please the court, that the subsequent interrogation on December 4th, 1962, 13 months after the first statement was taken, at this second statement is predicated upon the first statement taken on November 10, 1961 and all of the objections that I made to that statement at that time will pertain to this statement as much as this one is based upon the first statement.

The Court: Well, now so that the court may properly understand your argument, before I rule on it, let us do the same thing as we did with the previous statement by the Deputy Attorney General at the time that he took the statement at the fire house in Bellmawr. Question by Mr. Kaplan, "Chief Garrity, of course, the background of this is the idea that in Bellmawr there was a policy or practice of what is commonly known as fixing tickets, which meant altering or changing traffic tickets, and I believe that you

are familiar with the fact that that is something that has been suggested." Is there any quarrel with that?

Mr. Malandra: I object to that, if Your Honor please. I think that immediately puts the defendant Chief Garrity, in the position of where he was going before he starts, with the question being asked. He puts in there that there was [fol. 260] a policy or practice which was commonly known as fixing tickets.

The Court: That is the contention of the state that there was a policy and so on and so forth. Up to the present time, there has been nothing proven about a policy, as far as we are concerned, we have a situation of eight overt acts, and that is what the prosecutor is putting in at the present time. Now, while an investigation is going on, you can say it has been suggested that you were connected with Murder, Incorporated and they had a policy of going around and killing people and so on and so forth. It may subsequently turn out that you had nothing whatsoever to do with it, but under the circumstances, they are telling you what they are calling you in there for to ask you questions and to try to get answers from you, to see if you are in any way involved or if the information they received from you will involve anyone else in the contention that they make concerning a policy for this business of fixing tickets. The state may contend a hundred and fifty things, but it's been your experience on many occasions, for example, they were most vigorously contending that the defendant was guilty, you were on many cases when the final verdict came out either by the court or the jury that their contention had no merit and found the man not guilty so they can contend anything but the contention means absolutely nothing, it's the final result to it, the verdict in the case by the court or the jury that confirms the contention or throws it out the window as having no merit.

Mr. Malandra: I understand Your Honor's explanation, but I still must object to it.

[fol. 261] The Court: Overrule the objection. The next paragraph, "Now, I would like to go over these. Before we

go on, I explain to you we are working a Supreme Court order dated last June directing originally the Attorney General to investigate the Municipal Court in Bellmawr, and now it has been referred to the Prosecutor of Camden County for further investigation, to supply facts that were not obtained by Mr. Rigg in his capacity as Deputy Attorney General concerning irregularities in the handling of motor vehicle matters."

Mr. Malandra: I have no objection to that.

The Court: All right. Next paragraph. "There are some questions we wanted to ask you and before I do, I want to advise you that anything you say must be voluntary, of your own free will and accord, without any threats, promise or coercion. Anything you say may be used against you or any person in a subsequent proceeding in the courts of our state." Any objection to that?

Mr. Malandra: No objection.

The Court: The next paragraph, "You do have the privilege under our law to refuse to make any disclosures which you feel may tend to incriminate you."

Mr. Malandra: No objection.

The Court: Do you wish to argue further than upon the introductory statement?

Mr. Malandra: No, just that I'd like to incorporate my original argument.

[fol. 262] The Court: All right, let the records show that previously Mr. Malandra made several objections to the explanatory statement given by the Deputy Attorney General, Mr. Rigg, and that as far as he is concerned, although he has made one specific objection, it is to be clearly understood that all of the objections made to the previous introductory statement, are to be considered likewise without formally making them as being incorporated and referred to and a part of the objections concerning the statement, the introductory statement made by Mr. Kaplan at the interrogation of the defendant, Garrity.

Mr. Aiken: May I raise just one point in connection with Mr. Malandra's objection to the statement, to Mr. Gar-

rity by Mr. Kaplan, he says he's making the same objection and that's what I don't understand because one of the objections he made yesterday was related to the statute 2A: 81-17.1.

The Court: Suppose I qualify by saying insofar as they refer to this particular matter.

Mr. Aiken: All right.

By Mr. Aiken:

Q. Now, Mr. Garifo, when you took the statement of Chief Garrity, mechanically shall we say, did you use the same procedure as you explained to us about the procedure you used in connection with the statements we discussed yesterday?

A. Yes sir.

[fol. 263] Q. You took it on your machine and you dictated it from your notes and the transcriber made it up, is that right?

A. Yes.

Q. And the original, I believe the original of the transcript that you made is there in front of you?

A. Yes sir.

Q. Now, during the course of the interrogation of Mr. Garrity by Mr. Kaplan, did you notice anything unusual or out of order concerning Chief Garrity's physical or mental condition?

A. No sir.

Q. Did any additional happenings take place during the interrogation?

A. Not that I remember sir.

Q. I understand you started in the evening, could you give us some idea of what time you started?

A. Approximately six-thirty, in that neighborhood.

Q. Now, what time did the interrogation terminate?

A. One-thirty the following morning.

Q. Now, during that period of time, were there any recesses taken or breaks or rest periods?

A. Oh, yes, there were a few of them.

Q. Do you know whether or not any food was brought in for the participants or that sort of thing, food or coffee or anything?

A. All I could say right now is coffee, I can't remember any food.

Q. And, at any time, during this interrogation, did Mr. Garrity indicate any desire to terminate the interrogation because of physical or mental condition?

A. Not that I remember, no sir.

Q. Did he indicate that at any time as far as you can [fol. 264] recall, that he felt that this wasn't a proper procedure of some kind or anything of that nature?

A. If he did in my presence, it's on the record.

Q. All right, that's all.

Mr. Malandra: I have no questions.

(Witness excused.)

JOHN F. CORBIN, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Mr. Corbin, I understand you're connected somehow with the New Jersey State Police, is that correct?

A. Yes, I am a member of the New Jersey State Police.

Q. And what capacity do you serve now?

A. I am a detective, second class.

Q. And how long have you been a detective second class?

A. Six years.

Q. And I understand that in 1961, you were assigned to Assistant Deputy Attorney Budd Rigg in his investigation in Bellmawr among other places, is that correct?

A. That's correct.

Q. Now, in connection with your duties assisting Mr. Rigg, do I understand that you were present on December

4th, 1962 or rather as a continuation of your duties assisting Mr. Rigg, were you present at the taking of the statement [fol. 265] from Chief Garrity on December 4th in the Prosecutor's office?

A. Yes, I was.

Q. Were you there the whole time?

A. The entire time.

Q. Now, during the questioning that was conducted I understand by Mr. Kaplan?

A. Yes.

Q. Did anything of an unusual nature take place, anything out of the ordinary?

A. No.

Q. Did you have an opportunity to observe Chief Garrity's physical and mental condition?

A. Yes.

Q. Was there anything unusual or extraordinary about it?

A. No.

Q. During the questioning, did he indicate any desire to terminate the questioning?

A. No.

Q. Or that it was not proper or improper things were being done or anything of that nature?

A. No, not at all.

Q. Now, during the course of the questioning, were rest breaks taken?

A. Yes.

Q. Do you remember how many or how often?

A. I couldn't recall the exact number, there was two or three, we took two or three breaks to get water or go to the men's room.

Q. Now, were you present when Mr. Kaplan gave the statement of rights that Mr. Garifo read from the transcript?

[fol. 266] A. Yes, I was.

Q. From what you were able to observe, did Chief Garrity understand that statement?

Mr. Malandra: I object.
The Court: Sustained.
Mr. Aiken: I think that's all.

Cross examination.

By Mr. Malandra:

Q. Now, Detective, this took some seven hours, is that right?
A. Approximately, yes.
Q. Did you have your dinner that night?
A. No.
Q. Did Mr. Garrity have his dinner that night?
A. I don't know.
Q. Then he worked for seven hours without any dinner, is that right, you worked seven hours without any dinner?
A. I did.
Q. Is that right?
A. Yes.
Q. Did you see any dinner being brought in to Chief Garrity?
A. Well, if I may qualify that dinner, me going without it. We had a couple of sandwiches and coffee brought up, and they were offered to Chief Garrity.
Q. Now, do you remember what time that was when you had the sandwiches and coffee brought up?
[fol. 267] A. No, I can't recall exactly.
Q. Do you remember who brought the sandwiches and coffee up?
A. No, I don't.
Q. Are you sure you had sandwiches, Detective Corbin, or was it just coffee?
A. No, it was sandwiches and coffee.
Q. Are you sure?
A. Yes.
Q. But you don't remember who brought it up.
A. No.

Q. Didn't the Chief complain at all at any time about being there some seven hours?

A. No.

Q. You never heard him say anything?

A. He did tell me he didn't have anything to eat after it was over with.

Q. I didn't hear you.

A. He told me he didn't have any supper after the entire thing was over with.

Q. But you did not hear him during the interrogation, say anything about it taking too long.

A. No.

Q. That's all.

(Witness excused.)

[fol. 268] SIDNEY KAPLAN, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Mr. Kaplan, I know you just came in and preliminarily I will explain that we are discussing the matter of the taking of statements of Chief Garrity on the evening of December 4, 1962. I understand that you were the person who interrogated Chief Garrity on that evening.

A. That's correct.

Q. And we have already read, Mr. Kaplan, the statement of rights or warning that you gave to Mr. Garrity before you started the questioning in connection with that statement of rights.

A. Statement of whose?

Q. Statement of rights or the warning that you gave Chief Garrity about not incriminating himself.

The Court: The preliminary statement before you asked questions, explaining the defendant's rights.

Q. Did Chief Garrity indicate any reluctance to answer any questions you were asking?

A. Not in my opinion.

Q. And during the course of the questioning at any time, did he indicate that any reluctance to continue with the questioning?

A. Not in my opinion.

Q. Or that he didn't want to go on with the questioning?

[fol. 269] A. No, he wanted to go on. He did not wish to quit, so to speak.

Q. And during the questioning, did you notice anything unusual about his physical or mental condition?

A. No.

Q. Did he make any complaints about anything that you could recall?

A. Not that evening.

Q. That's all.

Cross examination.

By Mr. Malandra:

Q. This was some seven hours, wasn't it, Prosecutor?

A. About that.

Q. Was it tiring to you to question for seven hours?

A. No.

Q. Do you think you could do that in the normal course of business every day?

A. I don't think I would argue about it. I might, I might not, I don't know, I never tried.

Q. Would you like to do it every day?

A. With Chief Garrity around, I might, I don't know, he's good company.

Q. Did you enjoy Chief Garrity's company?

A. Certainly did.

Q. Now, there were some breaks and coffee breaks, I understand, during the seven hours, two or three breaks, is that so?

A. I don't recall that. It was one break that I remember, I don't know whether I had coffee or not, I don't think I did.

Q. Was there any food brought up?

[fol. 270] A. No, there may have been, I don't know. I don't remember the food. I didn't have any, I know that.

Q. Now, you made a statement on direct examination that he, indicating Garrity, did not wish to quit so to speak. What did you mean by that?

A. Well, I was trying to frame my answer, and I used those words. You asked me whether or not I would do that for seven hours every night or whether Garrity had wanted to quit or anything of that sort. He did not. He wanted to go on.

Q. The prosecutor asked you whether or not Garrity made any complaints that night, and you said he made no complaint that evening. What did you mean by that?

A. Well, I didn't hear any that evening.

Q. Did he subsequently make some complaint?

A. He may have, I don't know.

Q. Did you hear?

A. No.

Q. Did he complain to you?

A. No.

Q. Any time after that?

A. No.

Q. Well, can you explain to me why you said no complaints that evening.

A. He didn't make any complaints that evening. It's very self explanatory.

Q. You did not indicate that he may have made a complaint later?

A. No, no inference like that.

Q. That's all.

[fol. 271] PHILIP J. LARGE, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Captain, I think everybody here knows you, so we won't go through the preliminaries of introducing you. You were present—

The Court: Do you have any objections?

Mr. Malandra: I'm well acquainted with the captain.

The Court: Only as an attorney, not as a defendant.

Mr. Malandra: Strictly as an attorney.

The Court: I'm happy to hear that. I have my own suspicions though.

Q. Captain, I understand you were also present during the taking of Chief Garrity's testimony on December 4th, transcript of which is before you?

A. That's right.

Q. Now, during the taking of the testimony, can you recall anything of any unusual nature occuring of any kind?

A. No sir.

Q. Were you able to observe Chief Garrity's physical or mental condition as far as you could see?

[fol. 272] A. Yes sir.

Q. Anything unusual about that?

A. No sir.

Q. Did he complain in any regard about lack of food, lack of sleep, lack of anything?

A. No sir.

Q. Did he indicate that he wanted to stop the interrogation at any point for any reason?

A. No sir.

Q. That's all.

Cross examination.

By Mr. Malandra:

Q. Now, did you have any coffee breaks that night?
A. Yes.
Q. How many did you have, captain?
A. One or two, I specifically remember one.
Q. Did you have any food brought up?
A. Yes sir.
Q. Did you have some dinner?
A. Oh, only in reference to the sandwiches and the coffee that was brought up.
Q. Now, this took some seven hours, didn't it?
A. Yes.
Q. Can you tell me why, with the assistant prosecutor, Sidney Kaplan, questioning Chief Garrity, why was it necessary to have John Corbin, Sergeant of New Jersey State Police and you as the Camden County Chief of Detectives, why was it necessary to have all three of you there?
A. Well, Mr. Kaplan by the Supreme Court was directed to prepare and conduct part of this investigation. Detective [fol. 273] Corbin was assigned by the attorney general's office to come to the Camden County prosecutor's office to assist in the investigation and I was instructed by Mr. Heine, the Prosecutor, to assist Mr. Kaplan in the investigation and preparation of the case.
Q. Well, actually neither you nor Mr. Corbin said one word on the record that night, did you?
A. Mr. Kaplan conducted the interrogation.
Q. I asked you and Detective Corbin, did you put one word on the record that night?
A. No sir.
Q. So that you actually were of no value to the record that night, were you?
A. Only in the assistance of Mr. Kaplan, that's all I could say.
Q. Well, did you frame questions for Mr. Kaplan?
A. No sir.

Q. Did you write questions down for Mr. Kaplan?

A. No sir, not to my knowledge.

Q. Did Detective Corbin write questions down for Mr. Kaplan?

A. Not to my knowledge, no sir.

Q. Mr. Kaplan was quite capable of questioning himself, wasn't he?

A. Yes sir.

Q. So that you and the detective had nothing to do there but to lend atmosphere, is that right?

A. Well, there was a question involving tickets, complaints, and matters like that.

Q. Now answer my question.

The Court: He is answering your question. Let him answer. He is explaining to you certain matters such as this, so answer the question.

[fol. 274] Q. Were you just there for atmosphere?

A. No sir.

Q. But you took no part in the questioning, either you or Detective Corbin?

A. No sir.

Q. That's all.

Redirect examination.

By Mr. Aiken:

Q. You were there to help Mr. Kaplan, weren't you?

A. Yes.

Q. So was Detective Corbin, wasn't he?

A. Yes.

Q. And do I understand that you had a very large stack of tickets?

Mr. Malandra: I object. There's no testimony at all concerning that and it's not proper re-direct.

The Court: I shall rule that because we have gone into the business of the statute, he occupied at the time he was present, in fact, I think you didn't say this, but I got

the impression that perhaps the gentleman from the state police and that Captain Large were there more from the standpoint of window dressing shall we say. He said he was there to assist Mr. Kaplan. Now, what the Prosecutor is saying well, in what nature or how could you assist him. You were merely limiting it to him. Now, he said no, I didn't do that and he already said to you that I was there to assist him. It may have been that he could've assisted him in some other capacity besides preparing the questions [fol. 275] because even you said the captain was capable of preparing his own questions, and didn't need aid from the state police gentleman.

Q. Tell us, captain, what was the nature of your help or assistance to Mr. Kaplan that evening?

A. Well, there was some hundred fifty to a hundred and sixty complaints, summonses, and receipts, that had been removed from the Borough of Bellmawr court that Chief Garrity was being questioned by Mr. Kaplan about and—

The Court: Well, may I offer a suggestion, when you have this other given that you make your answer a little bit different concerning this. Now we're fooling around here with only about seven or eight particular tickets so let's not turn around and start throwing around figures of one sixty, one seventy or one eighty. It's been my own experience regardless of what the court may say to the jury, when they hear big figures or something they might figure, well, he's involved in a hundred fifty, he must be in this, so I would suggest because, well, this won't bother me, it's purely a legal appraisal as far as the statements are concerned, but I think that if you answer that question by saying that you had in your possession certain tickets because I'm afraid if you start hollering out a hundred eighty tickets, I'll specifically tell the jury right there and then, I'll straighten it out immediately because I have an obligation to protect the defendant's rights too. I would prefer to keep my nose out of it if at all possible. I think you can see the merit to that, Prosecutor, so instead of hollering for

this, that and the other thing, I'll give the charge to the jury as soon as you get done and I'm quite sure that the state will not appreciate the charge in view of the fact that [fol. 276] I feel it is in the nature of something that may violate the rights of this defendant and as long as I'm sitting here, I'll protect them together with the rights of the state as I see it. Continue. It's merely a suggestion.

By Mr. Aiken:

Q. At any rate, you were there to assist Mr. Kaplan with the many details involved?

A. Yes sir.

Q. And so was Detective Corbin, wasn't he?

A. Yes.

Q. That's all.

The Court: You may step down.

Mr. Aiken: That's all I have in regards to that statement, Your Honor. If you want to go on to the next one, I'll recall Mr. Garifo.

Lawrence Garifo, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Now, Mr. Garifo, let's refer to the statement of Mrs. Naglee which you took part of, I believe, from page 58 on.

A. Yes.

Q. Of course, you weren't there when the preliminary [fol. 277] statement was given by Mr. Kaplan to Mrs. Naglee, were you?

A. No sir, I wasn't.

Q. All right, and I think you said you relieved Mr. Albert about 4:30 or so that afternoon.

A. Roughly.

Q. And how long did the taking of the remainder of the statement take, do you have any idea?

A. Approximately an hour to an hour and a half.

Q. Now, during that period of time when you were taking Mrs. Naglee's statement of the questioning of Mr. Kaplan, did anything unusual occur?

A. No sir.

Q. Did she indicate she wanted to stop or take a rest or anything of that nature, because of her physical condition?

A. Not that I recall but if she did it would be in the record.

Q. And did anything of an unusual nature happen as far as you can recall during your service there as a stenographer?

A. No sir.

Q. I think that's all.

Mr. Malandra: No questions.

Mr. Aiken: Just one question, Mr. Garifo, during the time that you were questioning, taking the testimony, did anybody talk to Mrs. Naglee about her heart condition?

A. No, the only time I recall about the heart condition was back in Bellmawr as I told you yesterday.

The Court: You may step down.

[fol. 278] Mr. Malandra: May we have a five minute recess, Your Honor?

The Court: By all means.

(A short recess is taken.)

FRED W. ALBERT, JR., being first duly sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Mr. Albert, I understand that on December 5th, you were the Certified Court Stenographer that started taking the testimony of Mrs. Naglee in the Prosecutor's office.

A. That is correct.

Q. And I wonder if we can dispense with Mr. Albert's qualifications.

The Court: Yes, I think as far as Mr. Albert is concerned, in fact I think you were chief of the local court stenographers at that time, of the three counties.

Mr. Albert: Not at the time I took these.

The Court: Well, let the record show that he was qualified to act as a Certified Court Stenographer in the capacity of which he is acting, and that he is agreeable to the attorney for the defendant and the defendant, without formal proof.

[fol. 279] Q. Now, Mr. Albert, at the commencement of the questioning by Mr. Kaplan, was there a warning or statement of the defendant's rights given to her, in your presence, and did you transcribe that statement?

A. Yes I did.

Q. Will you read that statement to the court, please.

A. Question propounded by Mr. Kaplan as follows: "Mrs. Naglee, to get this matter off the ground, I would like to question you about certain summonses and I want to inform you I am the Assistant Prosecutor and that this office is working under a Supreme Court order dated last June, directing originally the Attorney General of New Jersey to investigate the Municipal Court of Bellmawr with reference to irregularities in the handling of motor vehicle matters, and the Supreme Court has further instructed the Attorney General to submit the case to the

Prosecutor of Camden County for further investigation. I want to ask you some questions, but before I do, I want to advise you anything you say must be voluntary and of your own free will and accord, without any threats, promises, or coercion and anything you say may be used against you or against any other person in any subsequent action, and you have the privilege of refusing to make any disclosures which you feel may incriminate you. Do you understand that."

Q. What was the reply to that?

A. The answer and reply was: "Yes."

Q. Now, Mr. Albert, during the questioning in which you participated, were you able to discern or see anything unusual about the physical or mental condition of Mrs. Naglee?

A. No I was not.

Q. Do you recall either before the commencement of the interrogation or during the interrogation whether there [fol. 280] was any reference to her physical condition by Mr. Kaplan or anyone else?

A. Not in my presence.

Q. And do you recall anything of an unusual nature occurring, anything unusual of any kind that you can recall during your participation in the questioning?

A. I recall nothing unusual.

Q. Did she indicate any reluctance to proceed with the questioning at any time?

A. Not in my presence.

Q. That's all.

Cross examination.

By Mr. Malandra:

Q. Was there any mention, Mr. Albert, by anyone concerning the heart condition that Mrs. Naglee had?

A. Not in my presence, Mr. Malandra.

Q. That's all.

The Court: That's all.

(Witness excused.)

[fol. 281] SIDNEY KAPLAN, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Mr. Kaplan, in relation to Mrs. Naglee's statement, you conducted that also on that date following the interrogation of Chief Garrity.

A. I did.

Q. And you gave the warning statement of rights to Mrs. Naglee that Mr. Albert read?

A. I did.

Q. And then you continued with the interrogation both while Mr. Albert was there and Mr. Garifo was there?

A. Yes.

Q. And during that period of time, did Mrs. Naglee make any complaints about her physical or mental condition?

A. No.

Q. Do you recall having any conversation with her concerning physical condition?

A. Well, before we went on the record, I discussed it with her. I told her I had been advised that she had a heart condition and if she felt she wasn't able to go on, she wasn't under any compulsion to go on, and she said she wanted to go on and I think at least once during the interrogation I stopped and asked her whether or not she felt as though she could go on and she said yes, I can, she made some comments about it that she wanted to go on.

The Court: And that's on the record, is that correct?

[fol. 282] The Witness: Yes, that's at least once.

Q. And, other than what you mentioned, was there anything else observable that was unusual in the nature about her physical condition?

A. No, she showed no distress at all. She joined in and went along.

Q. And there was no unusual proceeding of any kind while the interrogation was going on?

A. What?

Q. Was there anything of an unusual nature that occurred during the questioning?

A. No.

Q. That's all.

Mr. Malandra: I have no questions.

(Witness excused.)

JOHN F. CORBIN, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Detective, were you also present during Mrs. Naglee's questioning by Mr. Kaplan?

A. Yes, I was.

Q. Were you present when the conversation between Mr. [fol. 283] Kaplan and Mrs. Naglee occurred about her physical condition?

A. Yes I was.

Q. And is your recollection about that conversation the same as Mr. Kaplan's?

A. Yes sir.

Q. And were you present during the questioning?

A. Yes I was.

Q. Did anything of an unusual nature occur?

A. No.

Q. Was there anything unusual that you could observe about her physical and mental condition?

A. No.

Q. That's all.

Cross examination.

By Mr. Malandra:

Q. Did you participate in the questioning?
A. No.
Q. Did you ask any questions at all of Mrs. Naglee?
A. I don't recall whether I asked any questions or not.
Q. You were there and Captain Large was there.
A. Large was there, yes.
Q. That's all.

The Court: That's all.

(Witness excused.)

[fol. 284] FRED W. ALBERT, JR., having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Mr. Albert, I understand you also took a similar statement from Edward Virtue, on December 7th, 1962.
A. Yes I did.
Q. And who was present during the taking of that statement?
A. Sidney Kaplan, Esquire, Assistant Prosecutor, Captain Philip J. Large, and John Corbin.
Q. And that, as I understand it, was also taken in the Prosecutor's office?
A. Yes.
Q. And was a statement made by Mr. Kaplan at the commencement of your interrogation to Virtue?
A. Yes.
Q. Will you read that statement to us?
A. Yes. By Mr. Kaplan: "Now, before we begin, I want to advise you anything you say must be voluntary, of your own free will and accord, without any threats, promises,

or coercion, and anything you say may be used against you or against any person in any subsequent proceeding in the courts of our state. You do have the privilege under our laws to refuse to make any disclosures which you feel may tend to incriminate you. You understand that?" Answer, "Yes." "You further understand this investigation was first undertaken by the Attorney General by Budd Rigg, and by direction of the Supreme Court, it has been [fol. 285] handed to us to possibly fill in some gaps. And this is why we are here, and I think the best we can do is to proceed with these tickets as background information. I will read what your testimony was earlier. I don't think there is any sense in doing this in Question and Answer form. At one point, you were discussing with Mr. Rigg the practice of altering the summonses in Bellmawr, and you answered you were aware of the alterations and Mr. Rigg asked you whether or not he was correct in his assumption you participated in this practice of altering tickets, and you answered it was just your own, and then in question form, he understood there was an apparent practice or policy or procedure which had grown up or had been set up in Bellmawr in the police department, whereby no alteration should occur without approval of the Chief, and you answered you also went to the Chief and the questions and answers went that way up to a point, and your own tickets, you took care of yourself and you had no recollection of taking care of other tickets of other officers." Answer, "That is correct."

Q. All right, now, after the warning was given, did the questioning begin and how long did it take you, do you have any idea, Mr. Albert?

A. I don't know whether the record—the record does not show the longevity of the questioning, but there are—

Q. But as far as you can recall or tell, was it an unusual length?

A. I would say at least two hours.

Q. All right, and during that time, did Mr. Virtue indicate any reluctance of any kind to continue with the questioning, as far as you can recall?

A. No.

Q. And as far as you can tell, his physical or mental condition appeared to be normal?

[fol. 286] A. He was entirely composed.

Q. And nothing of an unusual nature occurred during the questioning?

A. No.

Q. All right, that's all.

Mr. Malandra: No questions.

(Witness excused.)

Mr. Malandra: Your Honor, for the record, I would like to make the same objection to the initial statements made here in the Virtue statement, as was made to the statement that was taken down by Budd Rigg on November 10th, 1962.

The Court: All right, the objection of course, insofar as in any manner whatsoever that refer to the preliminary statement of questioning of Officer Virtue by Mr. Kaplan will be entered upon the record. And, may I say I would in my own opinion, I would give wide latitude to all of these objections and their considerations as far as relationship to this particular preliminary statement is concerned.

[fol. 287] SIDNEY KAPLAN, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. In relation to Mr. Virtue's statement where you also do the questioning, you gave the warning that Mr. Albert just read to the court?

A. I did.

Q. And during the questioning at any time did Mr. Virtue indicate that he did not wish to proceed for any reason?

A. No.

Q. And did any unusual or exceptional occurrence take place during the questioning?

A. No.

Q. And do you recall approximately how long it took?

A. I would say about two hours.

Q. And at any time did Mr. Virtue make any complaints of any kind?

A. No.

Q. That's all.

Mr. Malandra: No questions.

(Witness excused.)

[fol. 288] JOHN F. CORBIN, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Detective, you were also present during the questioning of Mr. Virtue by Mr. Kaplan on December 7th?

A. Yes I was.

Q. And did you hear Mr. Kaplan give the warning that Mr. Albert read into the record?

A. Yes I did.

Q. And after that warning, did at any time Mr. Virtue indicate any reluctance to proceed with the questioning?

A. No.

Q. For any reason or did anything appear to you to be abnormal or unusual about his physical or mental condition?

A. No.

Q. Did anything unusual occur during the questioning?

A. No.

Q. That's all.

Cross examination.

By Mr. Malandra:

Q. In reference to this statement, Detective, Kaplan and yourself and Large were all there during this interrogation?

[fol. 289] A. Yes.

Q. And did you participate in the interrogation?

A. No.

Q. That's all.

(Witness excused.)

PHILIP J. LARGE, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Captain, in relation to Mrs. Naglee's statement taken on December 5th, by Mr. Kaplan, you were present?

A. Yes I was.

Q. And now before this statement was taken, do you recall hearing any conversation between Mr. Kaplan and Mrs. Naglee concerning her physical condition?

A. I recall there was some conversation as to how she felt and whether she thought she was well enough to make the statement that Mr. Kaplan was going to take and she stated she was.

Q. Now, during the questioning, did anything unusual occur?

A. No sir.

Q. Did Mrs. Naglee indicate any distress of any kind, physical or mental, during the questioning that you recall?

A. No sir.

[fol. 290] Q. Did she make any complaints about anything that you can recall?

A. No sir.

Q. Did she indicate that she wanted to stop during the questioning for any reason?

A. No sir.

Q. That's all.

Mr. Malandra: No questions.

Redirect examination.

By Mr. Aiken:

Q. Now, in relation to Mr. Virtue's statement, you were present during that also on December 7th?

A. Yes sir.

Q. And did Mr. Virtue indicate anything unusual or extraordinary physical or mental symptoms and conditions as far as you can see?

A. No sir.

Q. Did he indicate any reluctance to go through with the questioning?

A. No sir.

Q. Did anything unusual occur of any kind during the questioning?

A. No sir.

Q. That's all.

Mr. Malandra: No questions.

(Witness excused.)

[fol. 291] COLLOQUY

Mr. Aiken: Now, Your Honor, that is all the witnesses that I have in relation to all the statements.

The Court: The state has rested their case then, as far as the voluntariness of the confessions.

Mr. Malandra: May I have, at this point, a few minutes recess?

The Court: Surely.

(A short recess taken.)

Mr. Aiken: I think, Your Honor, for this purpose we should start with the earliest statement taken by Mr. Rigg and I will indicate the pages to the court that I am interested in.

The Court: All right, supposing we first do this, Mr. Aiken, I understand that Mr. Malandra is not going to put on any witnesses to attempt to contradict the witnesses put on by the state, as far the admissibility of the statements

are concerned from a legal standpoint. It being understood, however, that he reserves the right to object to certain parts of the statement on the grounds that regardless of the voluntariness of the confessions or anything else, they still will not be admissible into evidence for other reasons, being immaterial and irrelevant to the issue being tried. Under the circumstances, therefore, the Court will at this time rule that from a legal standpoint, all of the statements made by the defendants both to the Deputy Attorney General, Mr. Rigg, and to the Prosecutor, Kaplan, are admissible into evidence from a legal standpoint, it being un- [fol. 292] derstood however, that there are certain reservations concerning the total content of the statements, and now counsel has agreed that the court in the absence of Mr. Garifo, who formally took the notes, shall read the various statements, the portions that both the state and the defendant feel are inadmissible will be ruled upon by the court. The various written statements will then be read with the portions that the court has ordered to be deleted therefrom, and then when the various statements are read in front of the jury, those portions of course, will not be read. Now, is that an understandable statement as to what counsel has agreed with the court to do, as far as the statements are concerned?

Mr. Malandra: Yes.

The Court: Understand further that we have a scarcity of statements due to the fact that Mr. Garifo, I assume, has one or two with him. We tried to get a hold of him, but he has been excused until two o'clock, and hence under those circumstances, we are kind of short on the business of statements. However, the defendant has agreed to use the one statement at this stage of the proceeding, is that correct?

Mr. Aiken: Yes, Your Honor.

The Court: I am reading, gentlemen, from the top of page 62 on the statement given to Deputy Attorney General Rigg, on Friday, November the 10th, 1961, at Bellmawr,

New Jersey. "Edward Virtue, having been duly sworn, was examined and testified as follows: By Mr. Rigg: Question: You are a Sergeant? Answer, Detective. Ques- [fol. 293] tion, As you know by now, Detective, I am working under a Supreme Court order issued last June directing me to investigate certain irregularities in the handling of motor vehicle matters in the Municipal court here in Bellmawr, together with various persons having any connection with the court, including the police department. That is why I scheduled this day, to ask you questions pertaining to this investigation.

"Before I do, I want to advise you anything you say must be voluntary, of your own free will, without threats or coercion or promise or reward, and anything you do say may be used against you or any person in a suit, subsequent criminal proceeding or proceedings in the courts of our state. You do have under our statutes as you may know, a privilege to refuse to disclose any matters which may tend to incriminate you; however, if you make such a disclosure with knowledge of this right and without coercion, you thereby waive this right or privilege with regard to any phase of this investigation.

"This right or privilege that you have is limited to the extent that you as a police officer when sworn and asked questions pertaining to your office and your conduct therein, if you refuse to answer, you then may be subject to a proceeding to have you removed from the department. Answer, Right. Question, How long have you been on the Bellmawr Police Force? Answer, Total of about eight years; four and a half years regular, the rest as a special officer. Question, How long have you been a detective? Answer, About three months. Question, Now I assume that you are aware of this specific problem about which this investigation is concerned here? Answer, Yes. Question, I also assume that you are aware of the practice of alterations of motor vehicle summonses here in Bellmawr? [fol. 294] Answer, I am aware of the alterations. Ques-

tion, Yes? Answer, Yes. Question, Am I correct in my assumption that you participated in this practice of alteration? Answer, Yes. Question, Would that participation be in relation to summonses issued by you and other officers or just in relation to your own? Answer, My own. Question, Did you in the years that you have been on the force at that time, seek to have a summons issued by another fellow officer altered? Answer, No. Wait a minute let's go back. Now. You say in my whole course as a police officer? Question, Yes. Answer, It is possible that I might have went to another one, but to be specific, I couldn't answer that. Question, Why? Answer, Well there is a lot of tickets. Question, Is there a lot of ticket fixing? Answer, Well, I mean, you see what you have there. Question, You are saying you don't recall ever seeking having a ticket issued by a fellow officer on this department altered, is that what you are telling me, you don't recall it? Answer, No. Question, Have you ever sought the alteration of tickets by officers in departments other than Bellmawr? Answer, No. Question, From what I have been told here this morning, I understand that there is an apparent policy or practice or procedure which has grown up or been set up in Bellmawr in the police department whereby no alteration should occur without approval of the chief, is that correct?"

Mr. Malandra: I object to that answer, Your Honor.

Mr. Aiken: The objection is well taken if it applies to the other two defendants, Your Honor, but as to Mr. Virtue, I think it can go in.

The Court: Well then, as far as we are concerned, [fol. 295] gentlemen, this part is out. From where it says Question, "What I have been told here this morning," down to the answer, "We always went to the chief," is out. The court has ruled that that part of the statement on page 65 where it starts Question, "From what I have been told here this morning", that the rest of that question and the answer given. "Yes we always went," is stricken and will

not be read by the person reading the statement to the jury. Continuing. "Question, And, in cases where a particular officer seeks the alteration of a summons issued by a fellow officer as opposed to his own, it is my understanding from what I have learned that it is not only cleared by the chief, but it must also be cleared by the issuing officer," that is out as too general. "Answer, if an officer comes to me and asked me about somebody else, it was always O.K. by the chief first." That is out. "Question, It wouldn't be okayed unless you okayed it also? Answer, That's correct." That is all out.

I think gentlemen, we are to understand from what counsel just stipulated that the questions are to be directed to, and I'm in no way being critical of Mr. Rigg, please because the statement in my opinion is fair, I don't think you tried to put anybody in the middle, all you tried to do is carry out your job decently and intelligently and that may I say for the record is, I think true.

"Question, Were you issued a summons and another officer wanted a favor done, it would have to have two approvals, the chief's and yours," that is out. The answer is out. "Question, I assume that other officers then on this force have asked you to consent to an alteration on a summons issued by you," all that is out. The answer is out. "Question, you can say that they have. Answer, Well you were asking me did they. Question, Yes. Answer, Come to [fol. 296] me and ask me to fix a ticket. Question, Yes. Answer I truthfully cannot say that they have and I can't say that they haven't. Question, You don't recall that happening? Answer, No sir. Question, So that the only recollection that you have, the only recall you have in relation to summonses issued by you, which were ultimately altered, is where they were done to your initial request. Answer, Yes."

All of the rest of that page is out. So that the whole of page 66 is out.

"That is the only recollection you have. Answer, Yes. Question, Do you recall whether anyone other than a police officer has ever come on your department? Answer, Other than a police department? Question, Yes. Answer, The individuals who have the tickets. Question, Did you recall any case where an intermediary has acted on behalf of an individual who has a ticket? Answer, There have been several occasions. Question, And in some of those cases, were they officers in other departments? Answer, Possibly, yes. Question, And were they in some cases local officials? Answer, No. Question, In no cases yo[illegible] could recall where a local officer was involved? Answer, No. Question, That would be either elected—" That whole page of 67 is out.

Mr. Aiken: Your Honor, I think that we're going to run into quite a bit of this type from now on. If I may make a suggestion at this point, for my purposes we can ignore everything up to page 122 and 123.

The Court: Fine, thank you for your cooperation, sir. That is more than satisfactory to you, Mr. Malandra, I would assume. Let me again state, however, that this is no way of being critical of the Attorney General, he was sent [fol. 297] down there to make an investigation. He made what I deem to be an honest and capable investigation and every one of these questions that he asked and every one of the answers that he received is pertinent to the job that he was doing. He had a perfect right to ask all of those questions. He made his investigation, he turned it in, when the matter comes to the court however, even though he has made a very, very thorough investigation which included many other matters besides the one for which likewise was his obligation to do, we are now faced with a different proposition, the particular indictment which the Grand Jury found which he had nothing whatever to do with. That is ordinary criminal procedure, it is criminal investigation and as I say again, and I want the record clear, that this court, and I don't think the attorneys either, are in any ways critical of the job that you did, Mr. Rigg. We

are limiting much of your investigation by the fact that we have this specific indictment charging the crime of conspiracy and I think counsel has among themselves, agreed without going into a lot of different arguments concerning the voluntariness of the statements, that the statements in themselves shall be directed at the eight matters as set forth in the indictment as far as overt acts are concerned. Now, to page 122.

"I show you complaint number 5157 issued on October 4, 1959, to Robert T. Killian, charging the defendant with driving while under the influence, which charge was thereafter changed to 39:4-85, receipt of fine showing five dollars and costs of five dollars for passing on shoulder, and indicates on the back that it was apparently done in court. Do you recall that? Answer, No sir, I don't recall, I don't remember. Question, Approximately how many drunk driver summonses do you issue in a year? Answer, I can't answer [fol. 298] that question. Question, Approximately? Answer, I couldn't answer that. Question, Twenty? Answer, Maybe. Question, All right, now, I have a group here, detective, of summonses where it involves an apparent decrease in the amount of speed originally charged."

Mr. Malandra: I object.

Mr. Aiken: That question comes out, Your Honor, just to the end of maybe.

The Court: All right, "I have a group," and now where do we go from there?

Mr. Aiken: Then we go into Mrs. Naglee's statement.

The Court: Then you have various other people who are not in this case. Are we all done then with this particular one, then I can write on here, stop, do not read further from this statement, is that correct?

Mr. Aiken: From Mr. Virtue's statement.

The Court: Well, that's the one I'm reading from. Well, I'll make this notation, and incidentally, we'll check this with Garifo before we get started up again so we all know what is in and what is out and let's further make this deal

now. If there is some dispute between you and Mr. Malandra as to what is in and what is out, my books shall govern: Is that agreed?

Mr. Aiken: Agreed.

[fol. 299] Mr. Malandra: Agreed.

The Court: Stop here, do not read further, go to Naglee's statement.

Mr. Aiken: Page 197.

The Court: All right, begin here. "Helen B. Naglee, having been duly sworn, was examined and testified as follows. By Mr. Rigg. Question, Mrs. Naglee, as you know, I am working under a Supreme Court order dated this last June, whereby or whereunder I am directed to conduct an investiagtion of certain irregularities in the handling of motor vehicle cases in the Municipal Court and apparently the police department here in the Borough of Bellmawr and it is pursuant to that order, that I have asked you to answer some questions which I want to put to you. Before you do however, I want you to be fully aware of the fact that anything you say must be voluntary and of your own free will, and of course without any threats, promises, or reward or any coercion. You do have a privilege to refuse to make any disclosures or give any answers which may tend to incriminate you. Things that you tell me may be used against you or any other persons in a subsequent criminal proceeding. That is why you have that privilege under the law. However, if you do answer a question in making a disclosure, by so doing you thereby waive the right or privilege that you have in relation to your entire investigation. You understand that? Answer, I do. Question, And understanding that, are you willing to proceed then? Answer, Yes. Question, All right. Now, am I correct in my understanding that you are the Violations Clerk here in the Borough of Bellmawr? Answer, That is correct. [fol. 300] Question, And you are also the court clerk, Answer, That's right. Question, How long have you been the court clerk? Answer, 1947. Question, Continuously?

Answer, No, six months in 1960, I was replaced by Mrs. Ferry. Question, As court clerk? Answer, Yes. Question, And did Mrs. Ferry carry then the duties and responsibilities and functions as such? Answer, She didn't have the full responsibility. You never have at the request of the judge, to have my books audited before I turn them over to her, and they never seen fit to have that done, so I continue handling the books, but she sat in court and then she would come in the next morning and go over, and I came out at night to lock up the monies that were taken in because she didn't have that authority. Question, Taking the money or locking up? Answer, See, the lock, she didn't handle this money, finally Mr. Lee was deputized to accept the fine rather than have it collected in the court, so then I wasn't allowed in court, so I would after the funds came in, I would take them then and then I would lock them up. Question, You say you weren't allowed in court, what do you mean by that, an order you couldn't go into the courtroom? Answer, There was a few of the councilmen were against me being the court clerk, and it was they that were lax in not having my audit taken. Mr. Smiley was the new auditor that year and he insisted I call Mr. Aiello and he also said the books should be audited before I turned them over. They never saw fit to have it done, so I never turned the books over. I was responsible until they were audited. Question, Did those councilmen tell you or any of them tell you you couldn't go into the courtroom? Answer, I couldn't sit, I wasn't on the bench when the people came out. Instead of Mr. Lee collecting the fine, I collected them. Question, Am I correct in understanding all Mrs. Ferry [fol. 301] did was sit in court? Answer, She sat in court and then she came back the next day and she made entries in the docket. We don't do it after court, because it was late and the next day she would come back and make entries in either the ticket docket or the criminal docket and also made out the monthly reports. I assisted her with that. And if there were to be any warrants issued, I did

show her how to make a warrant and how to send them out. And I let her make out the final notices. You know, when they don't appear. Question, Could you tell me what six month span that was in 1960, when did it commence, approximately? Answer, She was sworn the 28th of April, and I think she took over the 15th of June. It took that long before they replaced me. Question, So she would have served then from the 15th of June— Answer, Until December the 31st. Question, Then you went back to your normal function as court clerk? Answer, That's right. Question, During the six month span, when from the 15th of June to January 1st or the 31st of December, you say she made the entries in the court docket? Answer, That's right. Question, That would be the motor vehicle or the traffic docket and the criminal docket? Answer, Yes. Question, Did you make any during that six month span in the docket? Answer, Yes. Question, Now then, which ones did you make and which ones did she make? Was there any agreement as to how that was to be handled or what? Answer, She made some and I made some during that time. Question, Now which ones would she make? Did she make all of those which came into court during her six month period? Answer, She didn't make any receipts at all. Question, No, did she make the entries in the docket book after their disposition? Answer, After a court night, yes. Question, She would enter anything that happened in court? Answer, Yes. Question, During the daytime that [fol. 302] people came in and paid the fines that were handled through the violations bureau instead of by way of hearing, did she enter any of those? Answer, No, because she wouldn't be there for that; she only came back to do the court work, which had taken place in court, and then she would go home. Question, You had taken the fines as violations clerk and then you would enter them in the book as court clerk? Answer, Yes. Question, And you never turned any of those over to her to handle? Answer, No, and she only made the green cards that took place in

court. She never did anything with the violation. Question, And my last question along these lines, do you know, did she make any false entries pursuant to the operation which was going on there of altering summonses? Answer, No, she did not. Question, Not to your knowledge? Answer, No. Question, Do you know, Mrs. Naglee, was she aware that this was happening or was there an attempt to keep this from her? Answer, Well, you would have to ask her that, because I wouldn't know. I didn't make any bones about it. I didn't, I made entries without consulting her, because I didn't feel I needed to consult her. To me, she still wasn't a court clerk, because I was still doing the work. What she done was little trivial things, she didn't have the responsibilities because they didn't see fit to do it. Question, Well my question again, perhaps it was two-fold and maybe ambiguous. Did you affirmatively attempt to keep her from knowing that these alterations were occurring? Answer, No, I just did what I did in ignorance of her, because as she would come in in the morning and we'd have them, our receipts are numbered, and that is the way, you know, and the T number, that is the way she would enter it into the docket. And then when she was doing that, I would start to make the disbursements, either went [fol. 303] to the state, county or borough. Question, You say during that six month period she made up the reports for the judge, is that correct? Answer, With my assistance, she never caught on to it. You mean the monthly reports? Question, Yes. Answer, She couldn't do it on her own, she never could grasp it. I made samples that the state gave us, but she never grasped those to do on her own. We worked it together. Question, What is shown in the monthly report? What data goes into the monthly report? Answer, Do you mean the state, county or the one that goes to Mr. McConnell? Question, The one that goes to Mr. McConnell. Answer, The fines and costs that were taken in in traffic. Question, Was it all traffic, does it show all the traffic fines? Answer, Yes, fine and cost goes in one

column; and Borough parking in another column and criminal go in another column. Question, Now, how were these figures compiled and placed in the columns, where they done by reference to the summons and complaints, would you have those together for the month and then go over those and enter them into the report? Answer, Well, we always kept a work sheet on what took place in court. And then broke it down with the ticket control, where you have to refer back to the ticket control, the ticket that was issued and then it was disposed of. Question, What I'm getting at, is there specific and direct reference as double checked to the summonses when that report is made up? Answer, I don't know what you mean. You mean take a whole month's tickets? Question, That's right. Answer, Well, you have your disbursement book, you would refer to your traffic ticket book and then we transfer the monies in the traffic cash book to the regular disbursement book we carry two sets of books. Question, During the course of [fol. 304] working with you and making up the monthly reports, would Mrs. Ferry have had occasion to see the summonses for the month? Answer, Yes, she'd want to see them, they were there, they were always available to her. Question, They were available? Answer, Yes they were. Question, Now, in the course of her doing this, would she have referred to them, other than being available, would she naturally go to them or did she? Answer, She would have no use because she didn't handle the monies. Question, So that you don't know whether she ever saw any of these? Answer, No. Question, She wouldn't normally in the normal course of functioning as court clerk? Answer, No, not what her duties were. Her duties were to be the whole thing. Question, But she just never assumed them? Answer, Mr. Stanton was going to see that the books were audited, but for some reason, he never came around and I told Mr. Aiello, and he said definitely not to turn the books over to anyone until I had an audit. I talked to Mr. Smiley and he told me the same thing. The judge talked

to Mr. Stanton and asked him would he see the books were audited so they would be turned over, so they never did it, and I wasn't going to get on my knees and beg them. Question, Did you have any objection to Mrs. Ferry taking over the position as court clerk? Answer, The woman, personally, no, I felt very sorry for her. I was a little resentful for it, they did it for spite. Question, That would be these councilmen? Answer, Yes, I felt it was done for spite. Question, Would you feel, reflecting back over the last six months, do you feel, subject to this resentment which you naturally felt, that you cooperated with her? Answer, Believe me, I tried to show her everything that I could show her so she could never say I wasn't showing her, and on the back of the tickets—can I touch this? Question, [fol. 305] Yes. Answer, Where it would be like, here, like you know, it would be in here or sometimes if she would copy, just to make the green cards, it would be like I will say James Lee, they put on here J. L., H. B. N. or J. L., H. B. N. whoever collected it. She would be there probably and I would ask her if she would put M. F. and she said no. I said, "You are making out the ticket, that is the reason I am asking you." I am responsible, my initial would be first, because I took it. In case there was any reference as to why her initial would be on there. Question, All right. Now, Mrs. Naglee, going back in your recollection as best you can, can you recall when the conduct of altering tickets first impressed you as occurring with the degree of frequency where it might be determined a practice?"

Mr. Malandra: I object to that, Your Honor.

The Court: All right, we'll take it out. Question beginning all right, now Mrs. Naglee, going back and—

Mr. Aiken: I think we ought to go on to page 215. It gets specific there.

The Court: I think if I may refresh your memory, I think there is specific testimony that in some of these particular cases, I can't remember which that her initials or name or something else were on some of the proceedings which, tying her up in particular to some of the traffic or

other defendants listed in the eight overt acts. Well, I know he was asked whether it meant there was supposed to be Mrs. Naglee's initials in the specific overt act cases. [fol. 306] Mr. Aiken: I think, Your Honor, if we start with the first question on page 216—

The Court: All right. Page 208, I'll put above the stop here and go to bottom of page 215. The reason for that is I think if you start at 216, you do not have sufficient introductory questions or answers to properly understand the fair answer given on 216. We'll start here.

"Question, My question is, Mrs. Naglee, to the extent you did do it, you didn't feel guilt about having done it, when you did it, and was that because you felt that under the circumstances you were morally justified in doing it or did you feel in addition to feeling morally justified that you were legally justified in doing it? Answer, I didn't take that into consideration, I just knew the chief, that guy probably came in for some reason and his wife or somebody told him a fast story, and I was ignorant, I am ignorant, and I changed it. Question, Did you know at that time that it was unlawful to change it? Answer, Truthfully, no, I didn't think it was unlawful. Question, Did you feel that under the law you had the power to do that? Answer, Well, shall I say I didn't have any regrets when I did it. Question, That is not my question. My question is did you feel that under the law you had the power to do that? Answer, I didn't take that into consideration, I just changed it."

Mr. Malandra: I think that's where we should stop, Your Honor.

The Court: I don't think we should stop there and for this reason. I think we should stop at the next question because I think the next question—wait a minute, maybe [fol. 307] you're right. We'll stop then the reading at the end of the following question and answer. "That is not my question. My question is did you feel that under the

law you had the power to do that? Answer, I didn't take that into consideration, I just changed it." Stop there.

The rest of it is all to the merit of the thinking and not the understanding of the law, did anybody ever tell you this was wrong and all of that business, and I think in fairness to the Prosecutor, they have a right to pursue that, even though it is a little bit general. I think by doing that, they're fully carrying out the terms of the stipulation. So I'll go all the way up to the top of 219. The rest of 216 is out. Now we go over to 217, and the first part is out. Now we'll go all the way down to the last question on that page. We'll put on here, start here.

"Question, Now then, what I am trying to ascertain, I am only concerned about you at this time, I will talk to Chief Garrity to the extent you consider him your boss, you knew at the same time that he had no lawful right, did you not, to ask you to change these? Answer, Well, I will tell you the truth, I didn't take that into consideration, he had a right or not a right. I guess you want me to say that he had no legal right, but I didn't stop to think of the legal terms of that offense. I just did what I done and shall I say I am ignorant as to legal rights. Question, No one ever indicated to you, did they, Mrs. Naglee, that this was lawful, that this was in the province of the chief of police and clerk to change summonses? Answer, No, neither did they ever say that it wasn't. Question, Right. Now, Mrs. Naglee, on some of these summonses, as we discussed before, in the space for "Court Action", there are notations of a date where there was purportedly an appearance and a plea of guilty and disposition of guilt, [fol. 308] designation of fine and cost, and the purported signature of the judge. When in fact, of course, the defendant never appeared in court. Answer, That's right. Question, Did you do that? Answer, Yes."

Mr. Malandra: Now Your Honor, that is kind of general and pertains to a lot of different summonses, and not in particular to our case.

The Court: Overrule the objection. I think that is absolutely proper because again the question addressed to it concerning procedural matters. Now, in addition to that, I remember that during the presentation of the evidence on the part of the state, there were certain of these summonses on which her name appeared by way of initial, I think that was the testimony of Saul Teitelman. So, I think definitely this is even though it seems to be general here, it is specifically tied up to the one of the eight overt acts. I don't know which one, but my recollection is to it. Stop here. Now, where do we go from here.

Mr. Aiken: 220.

The Court: How much more is there of this?

Mr. Malandra: A lot more.

The Court: It is quarter after one.

Mr. Malandra: I'm just concerned now about whether the jury shouldn't be told to go home. We won't finish it in two hours today.

[fol. 309] The Court: I don't think we're going to get to the business of taking the testimony. The first thing that would be done anyway would be the reading of this to the jury. I think in fairness to, well, at this point, the state, and to the defendant that they should start on this statement fresh and the reason I say that is this, you see, we start and we only finish a part of it, they're going to forget everything that was said in the beginning and secondly I think it's going to be of great aid and assistance to the jury to have the jury find out what statements these defendants made as for themselves are concerned. The state of course, feels very strongly about that going into the evidence, too, because the consideration, the deliberations of all the factual contentions on both the sides, it would seem to me that the jury is especially interested in what the defendants themselves, have to say. If the state of course, felt that it was no aid to the state in presenting its case, obviously they would not have attempted to have the statements into evidence, so that I think what I'm going

to do, they're not due in yet, but when they do come in at two o'clock, chase them home. I think by the time we finish with all of the other things that we're going to be in a position to start fresh on Monday morning and then nobody gets the advantage because then we have a situation when we will definitely finish it on Monday. Court is adjourned for lunch.

(Luncheon recess taken.)

The Court: When we adjourned for lunch, to the best of my recollection, we had gone on Mrs. Naglee's statement to page 219. And, I think we had taken it to the bottom of page 217, and then we went on the other, even [fol. 310] though it was general, the court felt that it definitely belonged in the statement as explanatory, having to do with matters or procedure, in the fact that her initials did appear on some other papers that have already been entered into evidence.

The rest of that whole page can go out.

Mr. Aiken: I think Your Honor, that we can go to the first question on page 220.

The Court: Continuing.

"Question, To the extent you didn't feel guilty about this, Mrs. Naglee, did you conduct yourself in this area, openly before the judge? Answer, Well, I think I told you before that while the judge probably would be hearing a criminal case or something, I never had any guilt, I just did it on the back while he would be hearing other cases. I never openly showed him or anything like that. Question, Why not? Answer, Well, of course, I did not. Question, I know you didn't, what was the reason for not having done so? Answer, Because he was busy. Question, You are under oath. Answer, I know, and I am telling you the truth. Question, That is the only reason? Answer, I didn't feel it was necessary. I did it and there I am going back to ignorance again, I thought it was perfectly all right to do what I was doing, as long as the Borough got theirs. I

was interested in the Borough, to tell you the truth. Question, You have already said, however, though, again under oath, that you thought it was all right what you were doing, morally but you knew you didn't have the authority to do it. You have told me that. Answer, I have admitted that. Question, Now then, why didn't you let the judge know what you were doing, or did he? Answer, No, I didn't [fol. 311] let him know, no. Question, Why not? Answer, Mr. Rigg, I just didn't tell him. Question, Why? I know you didn't tell him. I am asking you why. Answer, Well, there is only one answer, because I did not. Question, Did you have authority to sign the judge's name? Answer, Yes I do. Question, Do you have his authority to sign his name to disposition record on the back of the motor vehicle complaints? Answer, Well, I had done it, but since June 2nd, he has signed everything, he's got everything, every little detail and everything else. Question, He keeps to himself now. Prior to that time, did you have the authority to fill in the court action? Answer, Many a time I sat there, yes, he would go on with something and I would mark the back of it, and I think you will find some other cases, they are not all legal, but after this investigation started, Saul will have to admit, even for no appearance, I would mark it "No Appearance" while he was working, and I would mark it "No Appearance" and the date so we could send the final notice. But he does all that now. I will be truthful, I don't think he thought that I was doing it. Question, To the extent that he would tell me that you did not have authority to sign his name, that would not be correct? Answer, If he did, that would be the first time. I signed all, with the exception of the monthly statement, and until Mr. Heine became Prosecutor, I signed them up until then for Judge Dzick, for Charlie Rudd, and Carl Auerbach, but when Mr. Heine, the report went in there one time, it was just a joke or something, he said, 'From now on I will sign them.' I would go over it with him and show him what it was. You say as to signing his name, I wouldn't say every day, but if there is a commitment for someone

to go to jail, I signed them all even if he is here, I signed his name and mine as the clerk. If we put someone [fol. 312] in Lakeland, I signed them. He is always authorized me, and all the previous judges. Question, How long has he been a judge? Answer, Oh dear, he finished out. Question, Roughly, approximately. Answer, Five, I don't know. Question, Approximately five years? Answer, Three years is up until July 1960, and he finished out Judge Dzick. He had to resign on account of going on the bench. Question, So it would be four or five years? Answer, Yes. Question, During that four or five years, did he ever ask you to alter one of these summonses? Answer, Did he ask me to alter them? Question, Yes. Answer, No. Question, Never sought it? Answer, No, he did not. Question, Do you recall in the last two years while you were acting as court clerk, in open court, his amending a moving violation to a parking offense? Answer, With him amending? Question, Yes. Answer, No, I know he has amended a ticket, but I don't think he ever amended a ticket to parking. Question, Do you know? Answer, He might have amended speeding or something. Question, Reduced the speed or something predicated upon the evidence? Answer, yes. Question, Do you know, Mrs. Naglee, whether these summonses and complaints were ever altered after they were actually handled in court? Answer, After he heard them? Question, Yes. Answer, No. Question, Have you ever asked the chief of police here whether consideration could be given resulting in an alteration at your request as opposed to one of the officers? Answer, You mean that I— Question, That you acted as the intermediary or interceder? Answer, I don't recall. Question, If you had, would you recall? Answer, I think I would. Question, Have you ever altered a summons or complaint without the chief's knowledge? Answer, No."

[fol. 313] Mr. Aiken: You skip to 228 now, Your Honor.

The Court: Well then, we stop right here. Might I suggest that before half way down the page, there seems

to be a question addressed to the business of bail sets and of course that is in the case. See, there is some testimony concerning bail receipts in the case as far as the eight overt acts are concerned, and I would think that under the circumstances even though this may be general, the matter of testimony concerning the practicing in effect would be relevant.

Well, may I stop and go to the middle of page 228 and I start, continuing, Question, "In relation to the issuance of bail receipts for bail which has been posted by the defendants, I am impressed by reviewing the papers here that very often bail is posted at night when you are not on duty. Answer, Yes. Question, And it would appear that whoever is on the communications or the desk in night, the dispatcher, issues the receipts, am I correct in that? Answer, That's correct. Question, Now, when you come in in the morning, are you then apprised of what has transpired the night before in relation to the posting of bail? Answer, Yes. Question, What do you do? Answer, What do you mean what do I do? Question, What do you do when you are told about it, are you given the money and receipt or what? Answer, Yes. Question, What do you do then? Answer, Well, when we were doing it in triplicate, with those yellow gadgets that you picked up. Question, Yes. Answer, That would be held until the hearing night. But then, now everything is deposited. Question, yes. Did you make a record when these bail receipts were turned over to you and the cash was turned over to you in the morning, did you make a record in any book or permanent [fol. 314] recording of bail? Answer, No. Question, Just put it in what, a drawer? Answer, In a separate folder, the ones that had bail attached to them. Question, Would the cash be right in the folder? Answer, Yes. Question, What would that be attached to, the complaint and summons? Answer, And with the bail receipt. Question, Now then, if a man appeared in, and say he was found guilty, he would take the fine out of the bail and give him the balance in

cash? Answer, On the return of this receipt. Question, And if he didn't have a receipt to return, what would you do? Answer, Well, if found guilty, there will be times when they would say 'I don't have it.' We took care of it that way. Question, Took care of it in what way? Answer, Gave him the official receipt for the fine or cost. Question, And give him the balance, if any? Answer, That's correct. Question, Did you get from him a receipt for the balance of the money? Answer, No, I did not. Question, I assume the same thing could've happened when the man was found not guilty. Answer, It would be returned. Question, He lost his receipt? Answer, Yes. Question, You would give the cash anyway and would you make him sign a receipt or make a notation on the copy of your receipt that he had gotten his money back? Answer, Well, you mean now a man has posted bail— Question, He's been found not guilty, he wants his money back and he doesn't have the copy of his receipt. Answer, Well, he'd get his money back. Question, And would he sign a receipt to protect you? Answer, No. Question, There would be no notation on the yellow copy of the receipt that he would have to sign? Answer, I don't know, you have them. Question, I don't have them all, Mrs. Naglee. Answer, I think the bail would've been returned. Very rarely he would put up bail and got it back. Usually [fol. 315] the bail would have to cover the final costs, or else it was a bondsman and, of course, there was no money there."

Now, we stop there, because we're now proceeding into another matter which is not one of the eight overt acts.

Mr. Aiken: That's right. I suggest you skip to 241. I might say to the court that on that page and page 242 and 243, all of that material will finally end up to—

The Court: I'm going to start to read here, and then go down to the bottom, is that correct?

Mr. Aiken: Yes.

The Court: Continuing.

"Question, Mrs. Naglee, in any other cases involving alterations of summonses, has this procedure been followed to your knowledge, of accepting bail and then applying that bail to the fine? Answer, You mean dividing it between the traffic and making it disorderly? Question, Yes. Answer, Well, there's been a couple of cases, I don't know. Question, Well, there was a case involving a Philadelphia resident, wasn't there? Wasn't there, Mrs. Naglee? Answer, Was there? Question, I'm asking you. Answer, I will have to go over there and look. Question, I'm asking you whether you recall. Answer, Ridiculous. Question, What was that? Answer, What do you want to know? Mention the name and I will tell you whether the name sounds familiar. Question, No, do you recall Mrs. Naglee? Answer, Let's see, you mean Mr. Stanton's friend. Question, Do you recall a Philadelphia resident who posted bail in a drunken driving offense? Answer, Yes. Question, What happened to the balance of that money? Answer, [fol. 316] It is at the safe. Question, This minute? Answer, Right this minute. Question, With his name on the envelope? Answer, Yes. Question, How many other envelopes do you have in the safe with money? Answer, I have but two." Stop there.

Mr. Aiken: Yes, and go to 245, starting with the question all right.

Stop and go to page 245. Continuing.

"All right, Now, when I was asking about this Philadelphia resident, you said, 'Do you mean Stanton's friend?" Is that Stanton, the councilman to whom you have referred? Answer, Yes. Question, Will you explain the circumstances surrounding that? Answer, Since this job came up I didn't know anything about Mr. Stanton's friend. Question, What have you heard? You mentioned that, why did you mention it? Answer, I mentioned it because I understood he was a friend of Tom Stanton. I had heard since this came up, Tom, that he was a friend of Tom Stanton's and Tom— Question, Interceded on his behalf, is that what you are saying? Answer, No, he did not intercede, Tom tried

to railroad Mr. Garrity, in my opinion. Question, How? Answer, He tried to get something on him. He was so provoked that he didn't make Director of Public Safety, that he is out to hurt anyone or anybody, and to me, I may be prejudice, but I think it was a lot of this and is all done for spite. Question, A lot of which is all done for spite? Answer, A lot of this investigation. I could be wrong. Question, Maybe my inference is not correct. Are you saying I am being spiteful? Answer, No, I don't mean that. I realize you have a job, but I mean I think it was done, I could be wrong, but I have become very prejudice that Mr. Stanton is out to hurt anybody because he made [fol. 317] the remark when he didn't get the Director of Public Safety job, well, nobody was going to be happy being director, so I understand. Question, we are getting a little far afield here. I am not concerned about that. What I am concerned about is why you said, 'Do you mean Mr. Stanton's friend,' and you named the name. I was talking about this Philadelphia resident. Answer, Yes, I understood he was a personal friend of his. Question, Did you also understand that he was looking into this matter with that fellow or what? Answer, No, I didn't hear that. But when I heard that it was a discussion about—I know the envelope is over there, I just don't recall his name. Was it Randolph? Question, I don't know, Mrs. Naglee. Answer, Yes, you do know. Question, I do know? Answer, You do know. Question, I don't have the summons, Mrs. Naglee. Answer, Anyway, I can't recall his name, and I understood that he was a friend of Tom Stanton's; that's all I know. Question, When did you understand this? Answer, Since this thing has been going on. I heard them discussing it. Question, When was that envelope placed in the safe, Mrs. Naglee? Answer, The date is on it. Question, What attempts were made in contacting that defendant? Answer, I believe Chief Garrity asked him if he would return here to our headquarters and bring his receipt, he would give him the balance that was due him. Question, When was this? Answer, Whatever the date is. Question, And then you just

never heard from the chap again? Answer, No, I didn't. I don't know. Question, You don't know whether the chief did but in any event, the money is in the safe. Answer, Yes. To my knowledge, it is still there, because I am the only one that has the combination, so I think it is still there. Question, You say there are just those two that are there? Answer, Yes. Question, I would like to get [fol. 318] those two envelopes and I want to get them marked. You want to take a little break and we will get those?

Mr. Rigg: So far as the questioning is concerned, that will be all. I want to question you again, but it will be some later time.

(Witness excused.)"

Mr. Aiken: Your Honor, I might explain to the court that in connection with those last statements that you read, I can fill in what happened, that they went over and got the envelope that was referred to and it related to Joseph Scott, one of the persons mentioned in the overt acts.

The Court: Is that in some other statement or do you want that continued?

Mr. Aiken: No, that's not in another statement, but I'll fill it in with testimony from Mr. Rigg.

The Court: All right. Well, as far as the actual written statements are concerned, that finishes Mrs. Naglee.

Mr. Aiken: That's right.

The Court: I mean from the ones that you took from Mr. Rigg, not the ones Mr. Kaplan took.

The next one I have before me seems to be Chief Edward J. Garrity with Mr. Rigg interrogating and that's on page 249. Are there specific instructions you want to give to the court?

Mr. Aiken: Well, I think the portions from 249 to 255 is perfectly all right.

[fol. 319] The Court: All right.

"Chief Edward J. Garrity, having been duly sworn was examined and testifies as follows: By Mr. Rigg: Question, Before I get started, because of the lateness of the hour and other commitments, I will undoubtedly have to question you again, as well as Mrs. Naglee and perhaps one or two of the other officers.

I would just like to establish a few things here quickly now. Before I do, however, you and I are aware of the purpose of the investigation of your being here today. Before I ask you any questions concerning this investigation into the alleged irregularities of the handling of the Municipal Traffic Violations by your department, I want to advise you that anything you say must be said of your own free will and accord without any threats or promises or coercion, and anything you say may be, of course, used against you or any other person in any subsequent criminal proceedings in the courts of our state.

You do have, under our law, as you probably know, a privilege to refuse to make any disclosure which may tend to incriminate you. If you make a disclosure with knowledge of this right or privilege, voluntarily, you thereby waive that right or privilege in relation to any other questions which I might put to you relevant to such disclosure in this investigation.

This right or privilege which you have is somewhat limited to the extent that you as a police officer under the laws of our state, may be subjected to a proceeding to have you removed from office if you refuse to answer a question put to you under oath pertaining to your office or your function within that office. It doesn't mean, however, you can't exercise the right. You do have the right. Answer, No, I will cooperate. Question, Understanding this, are [fol. 320] you willing to proceed at this time and answer any questions? Answer, Yes. Question, How long have you been chief of police of the department here in Bellmawr? Answer, About eight years. Question, And were you on the force prior to that time? Answer, Yes. Question, How long have you been on the police department altogether?

Answer, Fourteen years. Question, During that fourteen years, chief, when is the first that this practice of altering summonses started, as best you can recall? Answer, Gee, I don't know, it goes back a few years, but it became more critical as we started using speed watch and things like that. Question, What was that, within the last two or three years? Answer, Yes. Question, Now, am I correct in my understanding from talking with the other officers that it was the practice or the policy within the department here that no summons and complaint can be altered without your consent?"

Mr. Malandra: I more or less object to that, Your Honor, something that he's heard from other people.

The Court: Yes, but he has answered it yes. He can ask him leading questions and all of that and it's up to him. If he says I don't know but my understanding or I don't remember anything else, but he says yes. I'll permit that.

"Yes. Question, So that as far as you know, every altered summons within your files and my files has had to have your consent? Answer, Yes, I would say so, yes. Question, There's been quite a bit of discussion, Chief, by the various persons with whom I have talked today to the effect that they felt or seemed to feel there was nothing wrong with what was going on and what was being done, [fol. 321] but that you as Chief of Police had authority to do this. Do you believe that you had authority to do this? Answer, No. Question, Did you ever say anything to any of the officers to indicate to them that you do have such authority? Answer, No, I did not. Question, Did you ever indicate to Mrs. Naglee, as Chief of Police, that you had the right to downgrade summonses or alter summonses? Answer, I think Mrs. Naglee drew an inference or misunderstanding about the procedure altogether. Question, Why do you say that? Answer, Well, she actually felt every time something happened she would come to me instead of going to the judge with it, anything at all pertaining— Question, I mean in relation to these alterations, did you ever indicate

to her that you had authority as Chief of Police to alter the summonses? Answer, No, I never made it specific that I had the authority. Question, Did you ever do it generally as opposed to specifically? Answer, You mean to alter them generally? Question, I asked you Chief, whether or not you ever indicated to her that you had this authority and you said no, you never told her specifically. Now, did you generally tell her that you had this authority? Answer, No, I don't think I generally didn't. Question, As a matter of fact, she knew you didn't have the authority?"

Mr. Malandra: I object to that part.

The Court: Yes, I agree. Page 253, there will be stricken the question, Question, as a matter of fact she knew you did not have the authority. "Answer, No." I don't understand the answer anyway, and secondly, obviously they're asking him something that I think would be irregular as far as the charges against her are concerned. Just that one individual question and answer are out.

[fol. 322] "Question, You are not laboring or you did not labor under the belief that she as court clerk or violations clerk, had that right? Answer, No. Question, She didn't labor under that belief either, did she? Answer, Well, since this came out, I don't know, it surprised me some of the things I took for granted she knew. As being her job that is, within her capacity."

Mr. Malandra: If Your Honor please, I think I would like to make the same objection to that.

The Court: Well, I think you're right. We'll strike out "she didn't labor under that belief either, did she." Of course, they're asking him to inquire into the mind of Mrs. Naglee, so I think that it is sufficiently dubious in the mind of the court, but I'll strike that too and the answer "Well since this thing come out,—."

"Question, Now, Mrs. Naglee has indicated to me, Chief, that in no case was a summons and complaint ever altered after it was disposed of by the judge at a hearing. Now, does this also run true to your recollection? Answer, After

the judge disposed of it? Question, Yes. Let's assume there is a hearing and the judge made disposition, to your recollection was there ever an alteration subsequent to that time? Answer, Not that I can recall, no. You mean amending a sentence? Question, Changing a charge, changing a fine after the judge set the conviction and fine. Answer, No, unless it would be a circumstance like this, where the judge might have fined somebody and left them there to be committed in lieu of the fine, and then he was unable to get the amount up or something like that; that would be the only thing. Question, Then you reduce the amount so he wouldn't have to be committed? Answer, Yes. Ques- [fol. 323] tion, But you would never change the charge? Answer, No. Question, You would reduce the amount of the fine and Mrs. Naglee, I assume would show that on the complaint? Answer, I would imagine she would. Question, Would you ask her to? Answer, Generally, I mean I did not even bother with it. If the judge made a disposition in the case, most likely, as I said, there was a problem, probably waited around the station and couldn't get up the amount. Question, Do you recall—you go to court quite frequently? Answer, Yes. Question, Do you recall in the years that Mr. Teitelman has been the judge, is ever in open court altering a charge involving an operating offense to a parking offense? Answer, No, I don't ever recall, no. Question, Now again just so I am straight. All of these alterations, so far as you know, were done after having been cleared by you? Answer, yes."

Now, there is another pencil marking here, so I assume that counsel has agreed I stop there.

Mr. Aiken: Well I think those pencil marks, Your Honor, in fairness to Mr. Malandra, represent what I think—

Mr. Malandra: I know nothing about it.

The Court: As long as he keeps thinking the same way, we're making marvelous progress. Take a fast look, Mr. Malandra, and let me know if you want me to stop

there and keep on going. In the middle of 257 we have another pencil mark. Continuing.

"Question, Chief, I have here two envelopes, one is on the police department of Bellmawr, New Jersey stationery, and on the outside is written the name 'Scott.' On the back is [fol. 324] written 'Careless, ten dollars and five dollars, Disorderly, one hundred five dollars. Doctor, twenty dollars. Total One hundred thirty dollars.' At the end, underneath the two hundred twenty-five dollars, 'Less one hundred forty dollars paid, balance eighty-five dollars.' You recognize this envelope? Answer, Yes. Question, This envelope is opened on the end? Answer, Yes. Question, Do you know how this was opened? Answer, I opened it over at the hall just now. Question, In my presence? Answer, Yes. Question, Inside the envelope is an original complaint charging Joseph H. Scott of 2510 East Clearfield Street, Philadelphia, Pennsylvania, with disorderly conduct, together with a copy of the receipt to Joseph Scott, showing the payment of a fine of one hundred five dollars for disorderly conduct, on April 6, 1960, together with eight-five dollars in cash. Is that what was in the envelope when you opened it? Answer, Yes. Question, Who put these items in the envelope? Answer, I gave Mrs. Naglee the envelope, she put it in there. Question, Whose writing is this? Answer, Mrs. Naglee. Question, And the writing on the front? Answer, I put that there. Question, The name Scott was written by you and the figures by Mrs. Naglee? Answer, Yes. Question, Now, when did you give this complaint and money and receipt to Mrs. Naglee and what did you tell her to do with it? Answer, I told her to put it away. I said I told Mr. Scott, but I think that somebody might think that this guy was taken over, I think Stanton is friends with some relation of Scott. Question, You say Stanton, who do you mean? Answer, Thomas Stanton. Question, The councilman here? Answer, Yes. Question, You think what? Answer, I said put it away, because maybe he will come in and demand it some day,

and if it is in there—well, if Mrs. Naglee wasn't there, I'd [fol. 325] have to get her. Question, What does that cash represent? Answer, The guy originally posted I think it was two hundred twenty dollars the night Virtue picked him up. Question, Let's go back to that night. What was he charged with? Answer, Originally he was going to charge him with drunken driving, and then he made it 39:4-97. Question, Did he charge him with drunken driving, did he write up a drunken driving summons? Answer, He had 39:4-50, and then he run the test, if I can recall now— Question, Yes? Answer, And then he changed it to 39:4-97. Question, I see. What happened after that? Answer, Mr. Scott, I think called me on the phone and came down on a Monday morning or something like that, if I am not mistaken. Question, How much time elapsed between the time of the arrest and the time that he came down to see you? Answer, A couple days or a week. Question, What happened when he came to see you? Answer, When he came to see me, he said 'I am sorry, I have been taking some medicine.' He said 'I am quite upset, I have a nervous or heart condition.' He said, 'I know when the officer showed me the balloon and all, it looked like he was trying to take advantage of me.' I said 'Well, did you submit to the examination?' He said, 'Yes, I wanted to prove to him that I wasn't under the influence.' He said, 'I gave him a lot of stormy weather, I admit to it and I am sorry about it.' Question, Then what happened? Answer, Then in the meantime I had heard through the grapevine where we was trying to take advantage of Philadelphia motorists, you know. Question, Yes. Answer, So I mean, I told him, I said, 'Mr. Scott, do you feel that we took advantage of you?' He said 'No, I don't now, that night I was burned up when he said he wanted me to take the test.' And I said, 'Well, didn't it turn out in your favor?' He said 'Yes [fol. 326] it did.' Then I explained to him that we had a guy who we had prior to that and had the same thing, and he died in the hospital, and we suspected him of being drunk, and he was an acute diabetic. Question, Did Mr. Scott

appear in court? Answer, No. Question, When was the decision made that he didn't have to appear in court? Answer, Well, the night he came down there I told him that he could come back for a hearing before the judge, and what the charge would be, disorderly conduct and careless driving. Question, Yes. Answer, Or if he forfeited, it was up to him and I told him what the breakdown would be, you know, in the forfeit, and he said, 'Well, I don't know.' Question, What would the breakdown be in the forfeit, he would lose it all? Answer, I didn't want him to lose it all. I felt after talking to the guy that he was more reasonable than that night. Virtue was burned up and he felt, he was burned up at the guy and I felt that the guy wasn't a bad guy after talking to him. He proved to me he is a sickly man. Question, It was the understanding that he wasn't coming back? Answer, Yes, generally. Question, And at that time, you told him what the total amount of the fines and costs would be? Answer, Yes. Question, Why wasn't he given the balance of the money? Answer, Because of this conversation that we had. Question, Which conversation? Answer, About that we were supposed to be trying to railroad the Pennsylvania motorists, and I asked him did he believe that and he said, 'Well, if the man comes in here with you or your brother-in-law or something and demands this money, why I would just'— It's going on so darn long now, I'd like to be in a position to bring it out or if Mrs. Naglee is here to bring it out. Question, You have lost me, Chief, I am sorry. As I understand it, the defendant came in at a later date, some days after this [fol. 327] charge? Answer, Yes. Question, And you reviewed the matter and because of the circumstances, you felt he shouldn't be fined as heavily as he might be if he were to go to court, is that correct? Answer, That's right. Question, You, at that time, had two hundred twenty-five dollars of his money? Answer, Yes. Question, Which had been posted as his bail? Answer, Yes. Question, Now, you reviewed with him the fact that he could come into the court and defend and take his chances of losing up to two hun-

dred twenty-five dollars or perhaps more? Answer, No, I said it is according to what mood the judge is in. Question, He was risking money if he came to court, losing money? Answer, Yes. Question, Or in the alternative, he could not appear, which he would lose the bail? Answer, Yes. Question, And you indicated that in the instance the total fines would be one hundred forty dollars. Answer, Yes. Question, Leaving a balance of eighty-five dollars? Answer, Yes. Question, Now, did he ask for his eighty-five dollars? Answer, No, it was the understanding that we would hold it. Question, Until when? Answer, Until, in other words, we were supposed to be taking him over for the two hundred some dollars and we would hold it for him until he came back or someone came in and demanded it on his behalf. Question, This is what I am not following. You made it appear you were taking him over? Answer, Yes. Question, Purposely. Answer, Yes. Question, Why? Answer, Because we had heard this talk we were taking advantage of this Philadelphia motorist, but it was supposed to come from him, but he said, 'No, I don't feel that way.' Question, Now, who knew besides you and Mrs. Naglee and the defendant that you had this eighty-five dollars? Answer, Nobody. Question, Well then, how would your keeping it prompt anybody to make a charge that you were [fol. 328] taking him over? Answer, They thought he had paid more. Question, Paid more than what? Answer, The one hundred forty dollars they thought he had paid, he had to pay two hundred some odd dollars. Question, If you make up a receipt for him of one hundred forty-five dollars, or two sets of receipts and give him his change, and you have a copy of the receipt, he has a copy of the receipt, don't you have your proofs? Answer, Yes, I know it is wrong now. Question, It doesn't make any sense whatsoever keeping this money. Answer, I know. Question, The whole story doesn't make sense. Answer, That is the way it was. Question, Was this your idea? Answer, Yes, it was my idea. Question, When was this envelope put in the safe, Chief? Answer, Some time last year, shortly after, within

a week or two after that. Question, Were you to hold this forever? Answer, No. Question, As escrow funds? Answer, No. Question, When was he to get it back, when you had determined that the matter had died down sufficiently that you didn't think anyone would come in and make the charge? Answer, Yes. Question, When do you think you would have made that determination? Answer, Maybe when Mr. Stanton went out of office. Question, You intended to hold this until he went out of office? Answer, Yes. Question, This goes back to March, 1960, that you took this money? Answer, Yes. Question, It's been sitting here over a year, year and a half? Answer, Yes. Question, Were you going to sue Stanton then for making false charges against you? Answer, He hasn't made any. Question, If he had, was that your plans? Answer, No. Question, What would you do? Here is the money, you have been holding it for a year. Answer, Principal involved. Question, When was the last time you talked to Mr. Scott? Answer, I guess whenever he came down there that night, [fol. 329] I can't say when it was, Monday night or something. Question, You say he's a friend of Stanton or Stanton is a friend of his? Answer, Stanton is a friend of his brother. Question, Couldn't you accomplish the same thing by telling him to tell Stanton how well he was treated? Answer, That is the way it was. Question, This was the drunkometer that made the determination he wasn't under the influence? Answer, I think the drunkometer and the doctor. Question, Who was the doctor? Answer, Doctor Cooperman."

Mr. Malandra: Your Honor, I think we should stop there.

The Court: Yes, all right.

Mr. Aiken: I think the only other part remaining, Your Honor, is on 278.

The Court: All right. Stop and go to 278.

"Question, Now, Ed, in relation to this business of posting bail and getting receipts and thereafter having the sum-

mons altered for lesser offenses. Answer, Yes. Question, And recording of a fine less than the bail that was posted, how many times had that been done? Answer, I'd say be four or five times. Question, Now, in those cases other than these two, where the fine monies were left, what happened to the balance of the money? Answer, Well, I don't know if it was less. Wasn't there one in Philadelphia where the amount of the fines were left in the bail, one that was taken care of? Answer, How long ago? Question, About a year. Answer, Scott—I don't recall."

[fol. 330] Mr. Malandra: That is all, I think, Your Honor.

Mr. Aiken: Just the end of page 278.

The Court: Where it says "By Mr. Rigg: Suppose we wait now and we will have to go on further, Ed. Witness excused." We don't need that. I'll write on the bottom that witness excused. Is there any objection to that?

Mr. Aiken: No objection.

Mr. Malandra: No objection.

(Whereupon court is adjourned for the day.)

May 6, 1963.

Camden, New Jersey.

The Court: All right, let the record show that we're now proceeding into the reading of the alleged statement given by Chief Garrity. I am starting at page 2 of the statement.

"(Interrogation commenced at 6:30 p. m., Tuesday, December 4, 1962.)

EDWARD J. GARRITY, Chief of Police, Borough of Bellmawr, County of Camden, State of New Jersey, sworn.

By Mr. Kaplan:

Question, Chief Garrity, of course, the background of this is the idea that in Bellmawr there was a policy or practice of what is commonly known as fixing tickets, which meant altering or changing traffic tickets, and I believe that [fol. 331] you are familiar with the fact that that is something that has been suggested.

Now, I would like to go over these. Before we go on, I explain to you we are working on a Supreme Court order dated last June, directing originally the Attorney General to investigate the municipal court in Bellmawr, and now it has been referred to the prosecutor of Camden County for further investigation, to supply facts that were not obtained by Mr. Rigg in his capacity as Deputy Attorney General, concerning irregularities in the handling of motor vehicle matters.

There are some questions we wanted to ask you and before I do, I want to advise you that anything you say must be voluntary, of your own free will and accord, without any threats, promises or coercion. Anything you say may be used against you or against any person in any subsequent proceeding in the courts of our state. You do have the privilege under our laws to refuse to make any disclosures which you feel may tend to incriminate you. Now, shall we proceed. Answer, Yes. Question, You understand your rights? Answer, Yes. Question, First, I'd like to go into some of these tickets, one by one, and ask you some questions. It may be that you will want to look at these tickets, Chief, and I have here a ticket issued out of the municipal court of the Borough of Bellmawr, in the nature of a complaint, number 5453, and in the future as I go through these tickets, I will not indicate that they are from the municipal court of the Borough of Bellmawr, we will assume they are, and issued out of that court and directed to the persons whose names I will mention and for the

charge I will mention. The questioning will involve apparent changes and the reasons why they were made and [fol. 332] by whom they were made and under whose direction, and that will be the general tone of this inquiry tonight."

Is this one of the tickets?

Mr. Aiken: No it is not, Your Honor. Your Honor, there is some questions that start at the bottom of page 4, specifically question "Are you in a position to say that by reason of this so called policy or practice that only one person made these changes?" These questions run over to a little below the middle of page 6.

The Court: Stop, and go to bottom of page 4.

"Question, Are you in a position to say that by reason of this so called policy or practice that only one person made these changes? Answer, Yes, one person made them, one person made the changes and that came about by reason of a direction probably by you as Chief of Police in charge of the police? Answer, Yes. Question, In which the rule was laid down that no ticket would be altered without your direction and without your authority, is that so? Answer, Yes, it works that way. Question, That is substantially or absolutely correct. Answer, Yes, that is right. Question, And the person who made these changes was who? Answer, Mrs. Naglee."

Mr. Malandra: If Your Honor please, I must make that objection in mentioning of Mrs. Naglee in as much as this statement was taken after the alleged conspiracy.

The Court: No, definitely it is not binding upon Mrs. Naglee, Prosecutor. I think we can agree on that.

Mr. Aiken: Yes.

[fol. 333] The Court: I think that we'll take that out. It will save a lot of foolishnes of charging and re-charging because every time it would be mentioned I would feel inclined to direct the jury that it is only binding upon the person who made it and not upon the person whose name is mentioned.

"Question, So that in each of these cases which I will show you that practice was followed as far as you know? Answer, As far as I know, yes. Question, These officers who made these original complaints on which summonses issued, were they required to be interviewed and their consent obtained before you directed Mrs. Naglee to make the charge, provided you agreed the change be made? Answer, Yes. Question, That was the general procedure? Answer, There was none with objection on their part. Question, In other words, if an officer objected, you would not change it? Answer, Yes. Question, Everybody had to be in accord and Mrs. Naglee would not take direction from anybody except you? Answer, Yes."

Mr. Malandra: If Your Honor pleases, I must object to those three or four questions ahead where he says that it was general procedure, and they were talking about a lot of other people here.

The Court: All right, out.

Mr. Malandra: Start after that was the general procedure.

Mr. Aiken: Page 131, Your Honor.

The Court: All right we stop here and go to page 131.

[fol. 334] Mr. Malandra: No objections.

The Court: All right. Continuing.

"All right. Next is summons number 5291, dated November 29, 1959, and the defendant, Phyllis M. Zippel, are you familiar with that one? Answer, I don't know, she is a housewife or something. Question, You don't remember that one. Somehow I get the impression she may have been a nurse, however I don't know. Housewife is correct, that is correct, one hundred twenty-five pounds, female, and she is charged, had been charged originally with driving while under the influence of intoxicating liquor. Answer, Was she examined? Question, Yes, she was. She was charged originally with driving while under the influence of intoxicating beverages, and that was changed to Section 97. Answer, I never spoke to her, Prosecutor, I

don't recall the case. Question, Well, would you know who paid here? This was changed to careless driving. Can you tell by the writing on there who might have made the change? Answer, I would say the officer. Question, Now, in the last case you said the officer and in this case you said the officer, which officer is that?"

Mr. Malandra: I object to that portion of the statement.

The Court: What portion?

Mr. Malandra: Where he mentioned officer and the other defendant.

The Court: Well, give me the writing on the page. What is the direct quote?

[fol. 335] Mr. Malandra: I would say starting with the question, "Well, would you know who paid here? This was changed to careless driving. Can you tell by the writing on there who might have made the change?"

The Court: Strike that.

Mr. Malandra: I think you can start at the bottom of page 132.

The Court: Starting at the bottom of the page, 132.

"Question, You know who paid the doctor? Answer, No, I don't. Question, Is there any possibility that these things were done behind your back where you didn't know of the changes, is that what you're suggesting? Answer, No, I am not suggesting. Question, It could've happened, I suppose. Answer, Could have happened, but I am not suggesting that, I am not passing the buck. Question, Well, there is no sense in being a hero about these things. Answer, I am no hero, but what I can't remember— Question, This was not brought to your attention as far as you remember, and you have a pretty good memory? Answer, It was brought to my attention, I don't know, whether she was separated from her husband, whether she was having troubles at home, I don't know whether she was trying to keep children, I mean I am trying to think what it was. Question, She lived around Fairview, 689 Morgan Avenue, that wouldn't mean anything to you? Answer, No. What

does it say for occupation on there? Question, Housewife. Going north on Kings highway. Answer, I don't know whether she was working, I am not sure. Question, You have no clear recollection? Answer, Not a clear recollection? Question, Do you have a dim recollection? Answer, [fol. 336] Not even a dim one, no. Question, In other words, something could've happened that you don't know about it? Answer, I know about it, you mean it was done without my knowledge or something? Question, Yes. Answer, No, I wouldn't say that. Question, Was this done with your knowledge? Answer, I know that it was done, but I don't know just how. Question, You know the change was made? Answer, Yes. Question, But the responsibility as having authorized it to be made? Answer, Yes, I will accept the responsibility. Question, Are you doing that to protect the officer? Answer, No, I am no hero, but I mean I am truthful. Question, You don't know the nature of the doctor's report? Answer, No, I don't. I mean I could probably talk it over with the officer and probably refresh my mind. Question, Now, why would it be in these last two cases that no disorderly conduct charges were made against these people, even though the drunken charges were sort of withdrawn and abandoned and the charge reduced to careless driving and so on, when you had instructions to Mrs. Naglee to catch these things. Answer, No, I didn't have instructions. Question, I gathered earlier that every time one of these was down-graded from drunken driving to something lesser— Answer, I think it would depend on the circumstances of the person. Question, Well, you talked about a soldier, 'I waited for him to get one hundred dollars' he didn't have any pity on him even though he was a soldier. Now, this Zippel woman, you let her go, and I forget the name of the last party we talked about, you did the same thing. In other words—"

Mr. Malandra: I think that should be stricken, Your Honor.

[fol. 337] The Court: All right. Start with when you talked about a soldier. Stop.

Mr. Aiken: We stop now and go to 146, Your Honor.
The Court: All right. Page 146. Continuing.

"Question, All right, now we go to summons 5311 dated January 10, 1960, the accused being William R. Snyder, the offense happening at 2:20 a. m., the defendant being a resident of Camden, a deck hand, originally charged with drunken driving and, apparently, the charge was changed to Section 97, which is reckless driving. The matter is shown to have been disposed of on the back up by Judge Teitelman on January 20, 1960, which is ten days after the date of the summons and complaint on a plea of guilty and he was fined ten dollars and costs of five dollars, and Judge Teitelman signed it. That is I believe what you said was Judge Teitelman's signature? Answer, Yes. Question, Were you present in court? Answer, I can't recall. Question, Did this man appear in court? Answer, Well, the Judge—I don't know. Question, And Mrs. Naglee has acknowledged receipt of the five and ten on a charge of careless driving? Answer, Yes. Question, Was this man out on bail? Answer, Prosecutor, I can't recall. Question, I'm going to ask the question, I am going to ask you to look at this summons and look at the alteration and I ask you whether or not you can tell me who made that? Answer, No, not positively, I couldn't. I'd only be guessing if I told you. Question, Do you remember the case? Answer, No. Question, Anybody approach you on that case? Answer, No, I can't recall. I mean I can't recall any incident. Question, If you tell me, I believe you? Answer, I think the judge, yes. Question, Who made the change, you don't [fol. 338] know? Question, The officer? Answer, It could be the officer or it could be Mrs. Naglee, I couldn't be sure if I tell you. Question, You know nothing about the doctor's report in this case? Answer, No, I don't. Question, You don't know whether he was examined for drunken driving? Answer, No."

Mr. Malandra: If Your Honor please.
The Court: No, I think that's proper. As far as he is concerned, in that thing there, he is saying he said does

not know whether it was Naglee that did it or not. I think that is all right. Continuing.

"Question, There are no records that you have that would refresh your memory if we asked you to look the thing up? Answer, No."

The Court: Middle of 149, I think then.

"Question, And nobody ever spoke to you about this case? Answer, I can't recall it, no. Question, Of course, I am not suggesting anything to you, but doesn't that change resemble Mrs. Naglee's way of changing, although she has a better handwriting on the receipt, on the change it is rather crudely. Answer, Yes, but the judge made the change. Question, That may be, but when he heard the case it was 39:4-97, it wasn't drunken driving. Answer, You see it was altered. Question, Yes. Answer, And I am sure the judge looking at it sees it was altered. Question, That may not be, maybe he wasn't looking for trouble. Answer, I don't recall that case. Question, You don't recall anything about that case? Answer, No. Question, Do you remember him being charged with disorderly conduct? Answer, No, I don't offhand. Question, Well, he [fol. 339] was, and he plead guilty and he was fined a substantial amount, plus costs. Answer, In court? Question, Yes. Well, I don't know whether he appeared or not. Answer, He appeared before the judge there. Question, He appeared here on a careless driving charge and he may have forfeited the other, I don't know, it is possible. Answer, The other complaint would be backed up, you could tell if it was Mrs. Naglee's handwriting. Question, We will get into that. I mean it does establish a pattern, as you said you admit it was a pattern that you were charge and disorderly conduct and got the money? Answer, Yes. Question, All right. Next is number 5366, dated February 7, 1960, 2:40 a. m., Herbert W. Brining, Audubon Park, New Jersey, Truck Driver, charged with drunken driving, and in the 'other violations' area, the bracket, it appears as though there is an over-write over that, it appears as

though the '50' that there is an over-write '97', he was charged under the section and not by words, 39:4-50, but that was changed to 39:4-97, and the officer being Virtue. Answer, Yes. Question, And I ask you to examine this complaint and tell me whether or not you know who made that change. Answer, Well, I don't know. It looks like the officer, and yet it could be Mrs. Naglee's. Question, It resembles the last three or four that were made in Virtue's cases, in his cases the handwriting seems to be the same Answer, Yes."

Mr. Malandra: I object to that part, that question and answer.

The Court: All right, stop. Stop and go to page 152.

[fol. 340] "Question, And you know nothing about it? Answer, I didn't say that. Question, You know anything about this case? Answer, He is a truck driver? Question, Yes. Answer, The only thing I know, I think he was going to lose his job, I think he has five or seven children. Question, Did you see the doctor's report? Answer, I don't recall whether I did, truthfully, was there a doctor's report? Question, Yes. Answer, No, I don't recall whether I did or not. Question, Weren't you interested in the doctor's report—did you sanction this change? Answer, When I heard of the case, yes. Question, Was that before it was changed, or after it was changed? Answer, I don't recall, but I went along with it because I think he has five children or seven, I don't know which. Question, You didn't investigate the merits of the charge against him then, whether the doctor had said he was drunk or sober or anything of that sort? Answer, Truthfully? Question, Yes. Answer, No, I investigated the merits of the family. Question, What you thought were the merits of the case? Answer, Not the merits of the case, Prosecutor, the merits of his home. Question, Well, how did you find about this charge, did Virtue talk to you about changing it? Answer, He talked to me and explained, I guess the guy came back and told him the circumstances. Question, And this change was

cleared through the violations bureau? Answer, Yes. Question, And not through the court action? Answer, Yes, that's right. Question, And he was found guilty of careless driving? Answer, Yes. Question, And fined ten dollars and five dollars costs? Answer, Yes. Question, Without court action? Answer, That's right. Question, Even though the original charge had been drunken driving? Answer, Yes. Question, Was there any bail in this case at all? Answer, I don't think so, I don't think he had any money, I don't [fol. 341] recall if he was out of work at the time it happened or not. Question, Well, he wasn't a youngster. Answer, No, I know he had five or seven children."

Mr. Aiken: We can go to page 172. This is Linwood Finney.

The Court: All right. Page 172, continuing.

"Question, This one is number 5537, dated May 28th, 1960, it happened at 1:55, I can't tell whether it's a. m. or p. m., Linwood Finney, 46 Walnut Street, Pennsgrove, New Jersey, truck driver, charged originally with driving while under the influence of intoxicating liquors. You could see '50' under '97', the '97' being an overwrite, which changes the nature of the offense as charged from drunken driving to careless driving. And the back up shows that this was settled through the violations bureau as a careless driving charge. Answer, I think he was a colored truck driver, wasn't he? Question, Let's see. I don't think you show that on these things. Answer, Yes, I think so. Question, It does? Answer, I believe so. Question, Let's see, there is sex, Male, height, occupation, nothing to denote colored. Answer, I think he was a colored truck driver. Was he a truck driver? Question, Yes, Pennsgrove. And settled through the violations bureau for ten dollars, fine and five dollars costs, and that sum was received by Mrs. Naglee according to a receipt issued by her as of 6-20-60, which is quite a few weeks, several weeks after May 28, when he was charged with this thing. Was he charged with disorderly conduct, do you know? Answer, Yes. Question, Did he enter a plea

of guilty? Answer, Same as the others. Question, Handled the same way, he did not appear in court? Answer, Yes. [fol. 342] Question, Brought the money to Mrs. Naglee? Answer, Yes. Question, Is that what happened in each case? Answer, Yes. Question, She got the money, parceled it out? Answer, Well— Question, Paid the doctor? Answer, She didn't get all the money all of the time, because if it was, say, at night time or something, it was deposited with whoever the clerk was on the desk. Question, He turned it over to her the next morning? Answer, Yes. Question, Eventually she is the one that got it? Answer, Yes. Question, And she made the distribution, put the five dollars one place and the other money another place? Answer, Yes. Question, What was the doctor's report in this case? Answer, I think this was a border-line. Question, This was a border-line case? Answer, Yes. Question, And this was changed by whom? We are getting into Virtue again. Look at the '97'. Answer, I can't be sure. Question, Well, I don't want to put words in your mouth. Did you know that the change was made or was to be made? Answer, Yes."

Mr. Malandra: Your Honor, I think the portion there that question, "And this was changed by whom? We are getting into Virtue again. Look at the '97'", there until the end of the testimony, I think should be stricken.

The Court: All right.

Mr. Aiken: Well, I think the last question and answer is pertinent, "Question, And you authorized it and directed the change? Answer, Yes."

Mr. Malandra: I have no objection to that.

[fol. 343] The Court: I'm going to leave that other question in and we'll finish up with, "Question, This was a border-line case? Answer, Yes."

Now, which one were you talking about, the second question down?

Mr. Aiken: I think that it is pertinent. "Question, Did you know that the change was made or was to be made? Answer, Yes."

The Court: Continuing.

"Question, Well, I don't want to put words in your mouth. Did you know that the change was made or was to be made. The answer was yes."

Mr. Aiken: I think the first question and answer should come up on the top of page 175, but the second question and answer should stay in.

The Court: I think that's right. I think the whole thing ought to stay in because one of the situations here about this, that and the other, is that they say that a lot of this on their part was trying to help people.

Mr. Malandra: I have no objection if it all stays in.

The Court: I will permit it to stay in because part and parcel of his defense is as I see it is lack of criminal intent and a lot of these matters that are appearing in here have a tendency, at least to show a lack.

"Question, He came to you and got your— Answer, He came to me and explained the guy's circumstances. [fol. 344] Question, And you authorized it and directed the change? Answer, Yes. Question, Next is summons 5611, dated June 2, 1960, either 1:45 a. m. or p. m., John Gregal, Salem Pike, Clarksboro, New Jersey, a welder, and charged originally, you could see the '50' with the section dealing with drunken driving, which was changed to '97', which was superimposed on the '50', and it obliterates it to some extent. The complaint was made by Officer Virtue and the matter was disposed of through the violations bureau by a payment of ten dollar fine and five dollars in costs on June 21st, 1960, and the receipt was given by Mrs. Naglee for that amount on a charge of careless driving. Now, look at the summons, if you will, Chief, let me know who made that change. Answer, Mrs. Naglee. Question, Mrs. Naglee? Answer, Yes, because it's got it written there. Question, You could tell her writing, did she change the section number? Answer, Yes, I would say so. The number is confusing sometime, when they see the writing. Question, Too fast for conditions, that was the careless driving part? Answer, Yes. Question, Did you know the change was made or was to be made? Answer, Yes. Ques-

tion, Done with your permission? Answer, Was he examined by a doctor? Question, I will ask you that question. Answer, I don't recall, I am trying to think, John Gregal, he was examined on the same afternoon. Who paid the doctor in this case? Answer, Same way. Question, The same way. Was there a disorderly case involved? Answer, Yes. Question, There was a disorderly conduct charge? Answer, The Borough truck stopped and he bumped into it, and they got into an argument. Question, The money was deposited and the fine in this case was how much, fifty dollar fine and five dollars? Answer, Yes. Question, Of course, ten and five on the careless driving [fol. 345] charge, and the doctor was paid out of that money? Answer, Yes. Question, In cash. Did the doctor have to come down to get his money or did you take it down to him? Answer, No, he always came down to the station. Question, You never went to him? Answer, No. Question, You wouldn't do that? Answer, No, he came in on other cases. Question, And at that time, you took care of him? Answer, Yes. Question, No question in your mind about that? Answer, No. Question, Were you there when he was paid at any time? Answer, It was always on hearing night. Question, And you are there and you talked to him and he gets paid, and so forth? Answer, Yes."

Mr. Malandra: May I go back to 175. "Now, look at this summons, if you will, Chief, let me know who made that change?" He said Mrs. Naglee. I asked that that be stricken.

The Court: All right, take out this part here. "Now, look at this summons," that is correct?

Mr. Malandra: Yes sir.

The Court: And, where are you going now?

Mr. Aiken: Well, probably up to the second question on page 176.

The Court: Top of page 176, "Question, Did you know the change was made or was to be made?"

Mr. Malandra: No objection.

[fol. 346] The Court: All right, supposing we take out starting with, "Did you know the change was made or was to be made."

Mr. Malandra: I think 180 is the next page.

The Court: All right. Continuing.

"Question, Next is summons 5759, dated November 9, 1960, 2:30 p. m., Robert A. Franklin, Barrington, New Jersey, Machinist, I think. Apparently charged with driving while under the influence of liquor, which was changed to '97' over '50', which, of course, makes careless driving, with a further notation, 'Driving in and out of traffic over line', and this matter was disposed of, according to the summons, it may not have been disposed of this way, but the summons indicates it was disposed of November 26, upon a plea of guilty and the amount of the fine was ten dollars and costs five dollars, and the receipt signed by Mrs. Naglee for fifteen dollars indicated that the charge was careless driving. Answer, He had come down from the navy yard. He had his tooth extracted. I run a drunkometer on him, he wasn't examined by a doctor, I don't think. Question, Yes he was. Answer, Was he? Question, Yes, he was. Answer, Franklin? Question Franklin, he was R.A. Franklin. Yes, he was on November 9th. Answer, I don't recall the doctor examining him. Question, The doctor got paid twenty dollars for nothing? Who made the change, are you familiar with this? Answer, Yes, I am. Question, You are familiar with this? Answer, Yes, as I started to tell you, this fellow came from the navy yard, he had a tooth pulled, they had given him some stuff and I called the naval base to verify that he had just had the tooth pulled and the doctor had given him this shot of stuff and [fol. 347] told him not to drive. Question, Not to drive? Answer, Yes, and he drove. Question, Was it narcotic? Answer, Some type of narcotic, yes, I spoke to the doctor over there. Question, What did the doctor's report indicate in this case, do you remember? He was examined, you don't remember that? Answer, I didn't remember him being examined by the doctor, because I run a drunkometer

on him and we got less than 10 hundreds of one per cent. Question, Do you have the records of your drunkometer test? Answer, No, they would be attached to the report. Question, They will be? Answer, Yes. Question, Why wouldn't they be? Answer, I said we don't have them. I am just trying to recall the case. Question, Did we discuss as to who made the change? Answer, The change was made right after noon. Question, By whom? Answer, Well, it was either by Virtue or Mrs. Naglee, either one. Question, You knew about it? Answer, Yes, I knew about it. Question, You authorized or instructed or you went along with the deal? Answer, I was right there, because I am the one that called the hospital. Question, It was your idea? Answer, I called the hospital. Question, You instructed the change be made? Answer, Yes. Question, You don't recall whether it was—"

Strike that and stop there. Suppose we strike out, "You instructed the change be made." Then I'll run a line through the next question and actually line it out. Then we'll go over to, "But when we run a drunkometer on him," I think that's fair enough.

Mr. Aiken: All right.

The Court: Because you want the business of running a drunkometer test, Mr. Malandra. Still answering,

[fol. 348] "When we run a drunkometer on him, I am trying to think, he was eight or the one hundreds, that is what made us call the doctor over there. The doctor said, I forget the narcotic drugs that they had given him and he told him he shouldn't drive a vehicle. Question, Now, Robert Franklin in this case, must have been in some kind of a collision? Answer, Yes." Strike the next part out. We'll run a line through Question, "He had one hundred twenty-three dollars, fifty-five cents," whatever it is.

"Question, Now, was he charged with disorderly conduct? Answer, That is why I didn't think he had a doctor, because he didn't want to blow the balloon up. Question, Was he charged with disorderly conduct? Answer, Yes, he gave us a lot of trouble in the station. Question, What way?

Answer, Not wanting to blow the balloon up and saying we were trying to frame him, and being drunk and all that stuff, and call up the hospital. Question, Eventually he pleaded guilty to a disorderly conduct charge and fined one hundred dollars and five dollars costs? Answer, He admitted the next day he was nasty to us in his talk. Question, And also paid fifteen dollars for careless? Answer, Yes. Question, And this fellow is apparently the same pattern, where people have been charged with drunken driving, they will be changed if they plead guilty to a careless driving charge and disorderly conduct? Answer, Is this fellow charged the same way? Question, Well, if they are charged with drunken driving and then it is dissolved into two charges, careless driving, and they are charged with disorderly. Answer, Do you mean if we ask them if they want it that way? Question, You told me you had an arrangement with Mrs. Naglee where these drunken driving cases were changed for reasons best known to yourself." That's out.

[fol. 349] "Question, Regardless of the condition, there was a follow-up, not only as a charge of careless driving, but also a disorderly conduct charge? Answer, Yes, if it warrants. Question, You didn't think this man was drunk? Answer, When I did the drunkometer. Question, Yet you followed the same procedure? Answer, He gave us a lot of trouble. Question, This was the disorderly part, this case was a little different? Answer, He was a little belligerent at the station. Question, I guess drunks are a little belligerent, aren't they?"

Mr. Malandra: I ask that be stricken.

Mr. Aiken: I don't have any objection for striking that question and that answer.

The Court: All right, we'll just strike that out.

Mr. Aiken: Now, it goes to page 186, Robert Killian.

The Court: All right, we'll continue. Page 186.

"Question, Now, this is number 5157, dated October 4, 1959, and the defendant is Robert T. Killian, 2639 Emerald

Street, Philadelphia, truck driver, and apparently was charged with drunken driving by reference to the statute section, and that which was changed to 85. This was disposed of according to the memorandum on the back of this under court action on November 14, 1959, by a plea of guilty, where he was fined five dollars and five dollars costs, signed S. Teitelman. Is that the judge's signature? Answer, No. Question, Mrs. Naglee's? Answer, Yes. Question, And Mrs. Naglee has signed a receipt for the five and five and under a charge of 'passing cars on shoulder', [fol. 350] and I ask you whether you know who made that change? Answer, Well I don't know, either Mrs. Naglee or the officer."

Mr. Malandra: In view of that question, I have got to object to the top part of the page, also.

The Court: All right, the portion just read will be stricken. Supposing we take it from the top to page 187 down to the question "Now, was he charged with disorderly conduct". I think that is fair.

Mr. Malandra: That's right, sir.

Mr. Aiken: Well, is the answer "No" staying in, at the top of 187.

The Court: Yes, that should stay in.

"Question, Now, was he charged with disorderly conduct? He was. And there was a hearing on 10-14-59, which is the same day which it appears on 'Court Action'. Answer, I don't know too much about that case, Prosecutor, I can't recall. Question, And fined fifty dollars and five dollars in costs? Answer, Yes. Question, Would you know whether there was a court appearance in this case? Answer, I don't believe so. Question, In other words, this is some indication— Answer, I can't give you much detail on that case. When was that? Question, October 4, 1959. This goes back. Answer, Yes. Question, This doesn't ring too much of a bell? Answer, No. Question, Well now, in this case, bail was put up for this defendant who was a resident of Philadelphia in the amount of two hundred fifty

dollars, and who was James Lee. Answer, He is a dis-[fol. 351] patcher. Question, Police officer and, of course, authorized to accept bail? Answer, Yes. Question, And the bail is furnished by A. Del Rossi, a Mr. Del Rossi and for Bob Killian on driving under influence, I suppose it is, two hundred fifty dollars for his appearance. What happened to that bail money do you know? Answer, No, I don't know off-hand. I can't even recall the case good, as I told you that one. Question, He was going west on Browning Road. It doesn't say too much. Now, your department retains all the receipts for this two hundred fifty dollars? Answer, Yes. Question, Are there four copies or three copies? Answer, Three. Question, We still have the three? Answer, Yes. Question, Which indicates that Del Rossi never got a copy? Answer, Well, he had to get a copy, but if Del Rossi come back—is there anything marked on those other than that? Question, No. Answer, I truthfully don't remember that, I don't remember that case here. Question, Do you maintain a bail book? Answer, Let me see it? Question, Do you retain a bail book of any kind where you record cash bail items or anything like that? Answer, I think Mrs. Naglee does. This must have been given out and came back. That is how we got the white copy back. Question, Indicating what? Answer, Indicating that this Del Rossi, I guess, got the money back or something. But I truthfully can't explain it right now. I mean to get this back and they are stapled together, because they were torn off—in other words— Question, That doesn't always follow. Answer, Prosecutor, this one has been folded and the rest of these you could see are plain. This one has come back off Del Rossi. Question, Or something, but it doesn't dispose completely of the question. You have no other record, no other receipts, given or taken? Answer, Maybe Mrs. Naglee could enlighten you, [fol. 352] I don't know, but that white receipt was out, because it's been folded separate than the other ones. Question, I asked you whether you had authorized that change and you did say yes, or didn't you, I forget? Answer, Well,

I said this one didn't ring a bell with me. Question, You have no idea who made this change? Answer, I am sure I didn't object to it, I mean it doesn't stand out. Question, Can you identify the handwriting?"

All right, strike that then. Question, can you identify the handwriting and the answer are out.

Mr. Aiken: That's all in this book.

The Court: All right.

Now, gentlemen, I will proceed to start with the reading of the alleged statement of Edward Virtue.

"Edward Virtue sworn, By Mr. Kaplan: Question, Now, before we begin, I want to advise you anything you say must be voluntary, of your own free will and accord without any threats, promises or coercion, and anything you say may be used against you or against any person in any subsequent proceeding in the courts of our state. You do have the privilege under our law to refuse to make any disclosures which you feel may tend to incriminate you. You understand that? Answer, Yes. Question, You further understand this investigation was first undertaken by the Attorney General by Budd Rigg and by direction of the Supreme Court, it has been handed to us to possibly fill in some gaps and that is why we are here and I think the best we can do is proceed with these tickets. As background information, I will read what your testimony was earlier. I don't think there is any sense in doing this in question and answer form. At one point you [fol. 353] were discussing with Mr. Rigg the practice of altering the summonses in Bellmawr and you answered you were aware of the alterations and Mr. Rigg asked you whether or not he was correct in his assumption you participated in this practice of altering tickets and you answered that he was. He understood there was an apparent practice, policy or proceeding which had grown up or had been set up in Bellmawr Police Department whereby no alterations should occur without the approval of the chief, and you answered you always went to the chief and the questions then went way up to a point, and your own tickets

you had taken care of yourself and you had no recollection of taking care of other tickets of other officers. Answer, That's correct. Question, Now I'm going to show you some complaints of it and so on and ask you specifically as you look at these tickets whether or not the alterations appearing to be made on them, were made by you. I have 5532,—when I say ticket I mean complaint—"

Well, I think now we go—

Mr. Malandra: Well, Your Honor, I also would like to make an objection to the second question starting on page two. It says you further understand this investigation and so forth, taken directly and handed down to possibly fill in the gaps and that is why we are here, and then I object to starting with I think the best we can do is to proceed with these tickets and background information. I believe I will read what your testimony is earlier. I think that should also be stricken out of there.

The Court: All right, we'll stop it there. That is why we are here. We'll stop at that place.

[fol. 354] Mr. Malandra: That goes all the way down to the next question on page 3.

The Court: Yes, because I think the way we will read the statements is to put in Deputy Attorney General's statements first and then follow it up with the statement taken by Mr. Kaplan, and I will merely make that a suggestion, that first Budd Rigg and then next Kaplan on each of them individually. There will be at least some type of understanding. If we start jumping all over the lot, nobody's going to understand anything. So, if this is in the statement taken by Mr. Rigg, it isn't necessary to rehearse or rehash anything there. It's in the nature of an introductory statement anyway, so I think if we strike it out, it'll do no harm to anyone. Stop and go to middle of 3, is that right?

Mr. Malandra: As I understand it, Your Honor is starting on page 2, the second question when it gets down to the middle of the page, where the Supreme Court has been handed down to us to possibly fill in some gaps, that is why we are here. Is that where we will stop and then the answer on page 3?

The Court: Yes, that's right.

Now, I have one on 36 here, about one-third the page down.

"Question, Number 5291, November the 29th, 1959, 3 a. m., Phyllis M. Zippel, housewife, the word 'operate', which is printed as part of the ticket is circled, charge originally was 39:4-50, your drunken driving statute, and that has been erased and changed to, and when I say 'that you know', I mean '50' has been erased and inserted is [fol. 355] 97, which is the careless driving violation. And the matter was disposed of in the violations bureau on a careless driving charge and a conviction and a fine of ten dollars and costs of five dollars, and I ask you whether or not you made that erasure and that new insertion. Answer, That is not my handwriting. That is not my handwriting. Question, Are you familiar with the case? Answer, Yes sir. Question, Do you know whether or not Mrs. Zippel was examined for drunken driving? I'll tell you she was. Do you remember the nature of the report made? Answer, I believe she was found to be under the influence. Question, Found what? Answer, Found to be under the influence if she was examined. Question, The doctor pronounced her unfit to drive, in other words? Answer, Yes. Question, And were you asked if you would consent to this change, do you remember? Answer, I believe it was a hardship case. Question, I would like to get this clear. Do you recall being asked to make the change and give your consent? Answer, I'd had to be consulted, yes. Question, Do you remember who asked you? Answer, No, I do not. Question, Now, the receipt shows a conviction on a careless driving charge, and you give your consent because it was a hardship case? Answer, Yes, I believe it was. Question, And this is in line with the policy or practice that developed with tickets other than drunken driving, you did whatever you could to bring them into reasonable balance according to your judgment? Answer, Yes, may I see that summons, sir? Question, What was this change made the same night she was arrested? Answer, I couldn't answer

that. Question, Do you remember any details about the case? Answer, No."

Mr. Aiken: Page 43, Your Honor.

[fol. 356] The Court: "Question, Now, number 5157, October the 4th, 1959, 7:25 p. m., Robert T. Killian, a Philadelphia truck driver charged with drunken driving under section 50, originally and that is over-written with '85' passing car on shoulder, disposed of by court action on 10-14-59, although originally returnable according to the complaint on October 21st, 1959, a week earlier through court action, and there is a signature, S. Teitelman, disposition by a plea of guilty, a fine of five dollars, costs of five dollars, and I ask you whether or not the alteration or change which is shown on the front of that complaint is in your handwriting? Answer, No sir. Question, Is that Judge Teitelman's handwriting, do you know? Answer, No sir. Question, It's not his writing? Answer, No. Question, Now, do you recall a disorderly conduct charge against Robert Killian as of the same date on which you are the complainant, and he plead guilty on the 14th, which is the same day he plead guilty to passing car on shoulder, and he was fined fifty dollars and costs of five dollars. Do you remember that? Answer, No sir, was that in 1959? Question, 1959. Answer, No. Question, Are you familiar with the fact that bail, cash bail, was put up for Killian on this same night that he was arrested by one Del Rossi for his appearance on October 21st do you remember the bail being put up? Answer, No sir. Once we make the arrest and make the charge, we leave them in the station, and if they don't make bail, we commit them to the county jail. Question, You don't know anything about the bail being placed? Answer, No sir. Question, Who is Del Rossi, do you know? Answer, Del Rossi? Question, When you arrest one of these drunken drivers, do you stay with him until he is disposed of by bail? Answer, We have him examined, make our charges, and we will leave him in charge with the [fol. 357] man on the desk and we go about our business. Question, You don't stay with him? Answer, No sir, some-

times we do and sometimes we do not. Question, Do you remember being with him when the bail was furnished that night? Answer, No sir. Question, Do you recall examining the doctor's report in this case as to the drunkenness? Answer, No sir. Question, But you did consent to that change? Answer, Yes sir. Question, To whom, do you remember? Answer, No sir. Question, Now this disorderly conduct charge, do you recall why you placed a disorderly conduct charge against him? Answer, No sir. Question, Did you testify against him at a hearing for disorderly conduct, if there was a court action on it? Answer, Yes sir. Question, Do you recall testifying against him, he was a truck driver? Answer, Evidently, that's why I consented to the change. That would've meant his livelihood. Question, In other words, you consented to a downgrade so to speak of the drunken driving complaint to disorderly conduct charge and careless driving? Answer, Yes sir, it's possible the man was disorderly with me. Question, But you don't remember? Answer, No sir, I do not. Question, Was it the unusual occurrence or not uncommon if you felt it was a hardship case, you would dispose of it by consenting to a downgrade so the charges became not drunken driving, but careless driving and disorderly conduct? Answer, Where a person was disorderly with me, yes. Question, But not where he wasn't disorderly? Answer, No sir. Question, You're sure of that? Answer, I would say no sir. Question, Do you remember signing the complaint in this case? Answer, I signed my complaints, I'll say that. Question, Do you think someone might have signed your name to these complaints? Answer, I don't think so. Question, And you insist that anytime you downgraded a drunken [fol. 358] driving case, there was a legitimate reason for calling the person disorderly, even though he was a quiet drunk and just driving in a zig-zag fashion? Answer, I very seldom saw a man locked up for drunken driving that was very quiet. Especially when brought in for examination. Question, Let's say someone's conduct did not reach the point of being disorderly? Answer, I can't say I can

remember the case, no sir. Question, 5759, November 9, 1960, 2:30 p. m., Robert A. Franklin, charged originally with drunken driving, changed to careless driving with almost the entire part of the original charge obliterated and written over the careless driving section of the statute 'Driving in and out of traffic over the line'. You made the complaint, disposed of by what is termed 'Court Action' November 16th, 1960, although the matter wasn't actually returnable until November 30th, 1960, by a plea of guilty and a ten dollar fine and five dollars costs, signed 'S. Teitelman' although there is some question as to whether or not the judge did sign this. And, it shows a conviction for careless driving at a receipt of ten dollars and five dollars by Mrs. Naglee and I ask you whether or not you made that alteration or change on that ticket? Answer, I know of the case, but I didn't change it. Question, Tell us what you know about it. Answer, Mr. Franklin was involved in an accident, I brought Mr. Franklin to headquarters and charged him with drunken driving. Question, Was he drunk? Answer, He appeared to be drunk, yes. Question, What did the report show when it came in? Answer, I believe the report also said he appeared to be under the influence of intoxicating liquor. Wait a minute— Question, Does this explanation have to do with the fact he wasn't drunk? Answer, He was a drunkometer test if my recollection serves me. They have the report there. Question, [fol. 359] I didn't ask you that. Answer, I'm trying to answer it best I can, but I had so many cases. Question, I'm not pushing you. You thought he was drunk? Answer, I believe Mr. Franklin was brought in and I believed him to be under the influence. Question, And you made a complaint? Answer, I made a complaint and put him on the drunkometer. Question, Yes? Answer, I believed he had a reading of eight hundreds or nine hundreds of one per cent of blood alcohol. Mr. Franklin was a retired naval officer, and we told him he was under the influence, he became abusive and said he wasn't drunk. We checked out the navy yard, he stated he had just come down from the navy yard and he just had a tooth pulled and had

stopped and had a couple. Question, A couple of drinks? Answer, Yes, and I called the navy yard and talked to the surgeon who worked on him, and he stated he had a tooth pulled at the time and he had a lot of stitches and he gave him some kind of pills or some kind of medicine and he told him not to touch any alcohol. Question, Did he take the pills? Answer, Yes, I believe he took some right there. Question, Do you know that? Answer, Yes, he gave him some right there before he left to kill the pain. Question, Who did? Answer, The Doctor. Question, Doctor Cooperman? Answer, No, I examined him. I am a drunkometer operator. Question, Did the doctor give him those pills in your presence? Answer, No, I called the doctor the following day and he stated he had given him the pills, yes sir. Question, So you changed the charge? Answer, Yes sir. Question, No other consideration was involved except he had taken pills and that might have changed his condition? Answer, Yes, the alcohol didn't show enough to bring him under. Question, What happened to him? Answer, A friend took him home. Question, what hap-
[fol. 360] pened to his car? Answer, Left at the police station, no, it was towed in because it was involved in an accident. Question, Did you sign a disorderly conduct charge against this man? Answer, Yes. Question, At whose request? Answer, Mine. Question, Just yours? Answer, Yes. Question, Signed it the same night? Answer, Yes sir. Question, And did he have a hearing on the matter of disorderly conduct? Answer, No sir, I believe he forfeited his bail. Question, How much bail did he put up? Answer, I don't know, sir. I don't know sir. Question, Did you testify, were you in court when he was tried on the careless driving charge? Answer, I don't know whether he came to court or paid it, sir. I remember he paid for the damages to the car that he struck. Question, Were you in court when he plead guilty, if he did, to the disorderly conduct charge? Answer, I don't know whether he plead guilty in court or plead guilty and paid the fine, sir. Question, Didn't you tell me you were at every court session?

Answer, Yes sir. Question, How many court sessions are there a week? Answer, One a week. Question, No more than that? Answer, No sir, unless there is something special. Question, When you schedule a court appearance, it's for that one night the judge will sit if you book him for a court appearance at a certain time? Answer, Court night is Wednesday night. Question, And you book him for a court night, you don't have them there another night when there is no court? Answer, No sir. Question, And you schedule him for November 30th, and the thing was disposed of November 26th. How do you account for that? Answer, The only way I can account for it, he paid it through the violations bureau rather than come to court. Question, How do you account for the fact he was found guilty of [fol. 361] disorderly conduct on the 26th, which wasn't a court night. Suppose I tell you it is pretty well established it was a practice in Bellmawr on these drunken driving cases where because they were sorry for people and all that sort of thing and depending on the financial ability of the individual, he was fined varying amounts on the disorderly conduct charges, and fifteen dollars on the careless driving charges. Are you familiar with that practice or aren't you, or are you familiar with the fact that practice existed at one time during the time we are talking about? Answer, Would you mind rephrasing that. Question, In going through these complaints, and going through the dockets of the Bellmawr municipal court, there appears to be a pattern that in drunken driving charges have been changed to a lesser offense on occasions, and where the change is made, almost invariably the change is from drunken driving to careless driving under 97, in a disorderly conduct charge, and the careless driving charge is disposed of for fifteen dollars, while the disorderly conduct charge is disposed of by a guilty plea with the amount depends on the financial circumstances of the accused, and that seems to be the pattern followed in the Borough, it may not have applied to everybody, it may only apply to hardship cases, but isn't it a fact that practice existed and you knew about

it? Answer, Yes sir. Question, We don't have to quibble about it, it happened and it was part of something down there? Answer, Yes sir. Question, In Franklin's case, it was done by somebody and you may have had a part in it, but you think in your own mind you can justify it. Answer, Yes sir. Question, Number 5611, John Gregal, charged originally with drunken driving, changed to careless driving by writing over '50' and putting in '97' and disposed of in the violations bureau for ten dollars and five dollars, [fol. 362] which was received by Mrs. Naglee on a careless driving charge, and I ask you whether or not you made that alteration? Answer, That is my writing. Question, Do you recall whether there was a disorderly conduct charge in this case of Gregal's? Answer, No sir, I do not. Question, There is a record of Gregal having been charged with disorderly conduct, and it was disposed of on a guilty plea with a fine of fifty dollars and costs of five dollars. Do you remember that at all, whether you testified or not, now that was disposed of on a court night although the other offenses are run through the violations bureau. Answer, No sir. Question, Number 5537, May 28th, 1960, Linwood Finney, truck driver, Pennsgrove, charged with drunken driving under section 50, and written over '50' is '97' and in the careless driving box there is a ticket to indicate the charge as careless driving you made the complaint and Badini and Bagroski accompanied you. The charge was changed to careless driving, and disposed of by the court action on 6-20-60. It wasn't a court appearance. The court appearance is down as June 15th, 1960, and it shows that went through the violations bureau and that money was received ten and five, careless driving. Answer, No sir, that is not my writing. Question, Now, in the Finney case, you charged Finney with disorderly conduct and he forfeited fifty dollars bail for non-appearance. Do you recall the circumstances? Answer, If you're asking me about one disorderly conduct charge, I think if you will check, you will find out I have had a lot of disorderly arrests. I can remember a time at Dick Lee's, we locked up ten or fifteen

a night. You are asking me about one disorderly charge. Where is the needle in the haystack. I don't remember. Question,"

[fol. 363] Mr. Aiken: Stop there, and go to page 58.

The Court: All right, page 58, continuing.

"Question, Number 5366, February 7, 1960, 2:40 a. m., Herbert W. Brining, truck driver, originally charged with drunken driving on the complaint, and over the 50 is written 97 which is careless driving disposed of in the violations bureau for ten and five, for careless driving, and I ask you if you made the change? Answer, No sir. Question, But you remember the case? Answer, Yes, I remember the case. Question, Number 5311, January 10, 1960, William R. Snyder, Camden, a deck hand originally charged under section 50, drunken driving, changed to '97', careless driving charge disposed of according to the record on the back of this complaint on January 20, 1960, plea of guilty, fine ten and five, and signed Saul Teitelman. The receipt shows receipt of ten and five, by Mrs. Naglee on careless driving charge, and I ask you whether or not you made that change. Answer, No sir. Question, Now, do you recognize that as being Judge Teitelman's signature, if you know it. Answer, I would say that is the Judge's signature. Question, That is not your signature? Answer, No sir. Question, Are you aware of the fact you charged Snyder with disorderly conduct and that matter was disposed of on January 10th on a plea of guilty and a fine of one hundred dollars and five dollars costs? Answer, He was also charged with disorderly. Question, Snyder? Answer, It must've went into court. Question, He did? Answer, Yes sir. Question, Actually tried and defended? Answer, To the best of my recollection. Question, He plead guilty? Answer, To the best of my recollection, I would rather say I don't remember on that one."

[fol. 364] Let the records show that this is the alleged statement of Helen B. Naglee.

"Helen B. Naglee, sworn, by Kaplan: Question, Now, Mrs. Naglee, you are connected with the Municipal Court in Bellmawr? Answer, Yes. Question, In what capacity? Answer, Court clerk and violations clerk. Question, That work deals with police work involving traffic cases, matters of that sort? Answer, That is right. Question, Mrs. Naglee, to get this matter off the ground, I would like to question you about certain summonses and I want to inform you I am the Assistant prosecutor and that this office is working under a Supreme Court order, dated last June, directing originally the Attorney General of New Jersey to investigate the Municipal Court of Bellmawr with reference to irregularities in the handling of motor vehicle matters, and the Supreme Court has further instructed the Attorney General to submit the case to the Prosecutor of Camden County, for further investigation. I want to ask you some questions, but before I do, I want to advise you anything you say must be voluntary and of your own free will and accord, without any threat, promises or coercion and anything you say may be used against you or any other person in any subsequent action, and you have the privilege of refusing to make any disclosures which you feel may incriminate you. Do you understand that? Answer, Yes sir. Question, Are you willing to proceed? Answer, Yes sir. Question, How long have you been a violations clerk in Bellmawr? Answer, I think I went in in 1947, I think it was 1947. Question, You have been a court clerk for some length of time? Answer, Yes sir. Question, What are the duties of the violations clerk? Answer, That is for people who have violations that are not serious, doesn't have to come before the judge. They would sign a waiver. Question, [fol. 365] There are matters where you might dispose of them on payment of the proper amount? Answer, Minor violations. Question, What is the duty of the court clerk? Answer, As a court clerk, I prepare the cases for the judge, like disorderly cases and sit with him in court on court nights. Question, And you keep a docket of the cases? Answer, Yes. Question, You act in both capacities? An-

swer, Yes. Question, And issue receipts where it is necessary? Answer, Yes. Question, And you make returns where the matters are disposed of and there is excess money involved? Answer, What do you mean? Question, If there are any monies that are surplus, after a matter is disposed of, for instance if the fine is less than the bail. Answer, Yes, I return the money. Question, To the person entitled to receive it? Answer, Yes sir. Question, Mrs. Naglee, you're probably aware of the fact that this investigation stems from reports and later evidence of the fact that motor vehicle summonses have been altered and changed in some cases. Answer, Yes. Question, Do you want to say generally that was a fact, there have been cases where tickets have been changed or fixed, whatever you want to call it? Answer, I would rather say altered. Question, In certain instances? Answer, Yes. Question, And that has been a practice for some time in Bellmawr? Answer, It wasn't—I don't know how to put it. It wasn't a practice, it was a case where someone had gone to the chief or something, it wasn't all cases. Question, Not all the cases? Answer, Someone had a hardship case, he went to the arresting officer and he in turn went to the chief and he would try to give the person a break. Question, If the chief or the arresting officer or possibly you were contacted with a request to change it, alter it, and you felt like doing it, it could be done [fol. 366] if the chief would direct you to do it, but the chief always had the consent of the arresting officer? Answer, Yes. I never did one of my own. Question, There was an arrangement? Answer, The arresting officer usually went to the chief. Question, But it was known to the chief? Answer, It was really mostly in serious requests or where the point system was going to take the man's license. Question, I just wanted to discuss the practice—"

Mr. Malandra: I object to this next portion.

The Court: Yes. Stop at question "I just wanted to discuss the practice". Strike the whole rest of the page.

Mr. Malandra: Go to page 81, bottom of the page.

The Court: Go to page 81, continuing.

"Question, Next is number 5291, November 29, 1959, Phyllis M. Zippel, and in the 'other violations' block there now appears 'R. S. 97:4-97' where the '97' appears, there has been an erasure. I have no way of telling what was under there, we do know and we have a record that Phyllis Zippel was examined on November 29th for drunken driving. We have that information and you won't know what that report shows, of course. Answer, No. Question, This was disposed through a violations bureau? Answer, That's correct. Question, And I'm going to ask you this question. Answer, I had nothing to do with this. It is signed E. G. The chief collected the fine. Question, How do you know? Answer, E. G., I had nothing to do with it. I went in the next morning and he said Helen— Question, He took care of all the money? Answer, That's correct. Question, In this [fol. 367] case there was no disorderly conduct charge, just the fifteen dollars? Answer, No."

Mr. Malandra: If Your Honor please, I object to that portion.

The Court: I don't think there's anything wrong with it. I'll leave it in.

Mr. Malandra: Your Honor, page 84, I believe.

The Court: Stop here, and go to page 84.

"Question, Next is 5311, William R. Snyder, dated January 10, 1960, again he was charged with careless driving. Our records indicate he was charged with drunken driving, and in the summons fee '50' appears very clearly under the '97' written over it. The original charge was drunken driving, changed to careless driving. I show you this and ask you if you can tell me who made the change. Answer, That is the judge's writing. The judge heard it, but I changed it. That is my '97'. Question, And he heard it? Answer, He heard it as careless driving. Question, As careless driving charge? Answer, Yes, was he examined? Question, Do you recall whether Chief Garrity had instructed you to make the change?"

Mr. Malandra: I ask it be stricken.

The Court: "Do you recall whether Chief Garrity had instructed you to make the change" and the answer will be stricken.

Mr. Malandra: And the next question and answer?

[fol. 368] The Court: All right, continuing.

"Question, Our records indicate a plea of guilty and a fine of one hundred dollars and five dollars costs of disorderly conduct, William R. Snyder on 1-20-60. Answer, He was arrested on the 10th, one hundred five dollars. Question, And this ten dollars and five dollars here? Answer, And one hundred five dollars on the disorderly, and I wouldn't doubt but it looks like if the defendant appeared. Question, You think the defendant appeared? Answer, I couldn't tell you, you could see the hearing date in your traffic docket. Question, What would that indicate? Answer, Well, whether there was a hearing or whether it was taken care of in violations bureau. We have the marked hearing. I couldn't swear to it. It's marked hearing. Question, Then it would appear that this matter was disposed of at a hearing? Answer, That is the way it looks in the docket, I can't recollect. Question, Do you have many disorderly conduct cases in your court during the course of the year? Answer, Do we have many? Question, Yes, do you have many? Answer, Well, they run in cycles. Most of it is disorderliness. Question, But you do have them, they're not unknown to your court. Answer, No. Question, And when these disorderly conduct cases come up from time to time, where they have no reference at all to a motor vehicle case, such as we have been discussing, what does the judge usually fine them? Answer, It depends how serious it is. Most of our cases are at Dick Lee's and 'unable to give a good account', something like that. They range from twenty-five to one hundred dollars. At Dick Lee's we have habitual people come back there and they drink. It's usually one hundred dollars or so, because he is trying to break it up. Question, In other words, these disorderly conduct fines in [fol. 369] these cases are not out of line? Answer, No. Question, Are they lower? Answer, Fifty dollars, one hun-

dred dollars, some of them are legitimate. Question, They average out the same as the other cases? Answer, Yes. Question, Where automobile violations are involved? Answer, That is a set fine. Question, You said you made the alterations heard by the judge and you don't know whether — Answer, No. Question, Next is 5366, Herbert W. Brining, charged with drunken driving. You can see the '50' over which has been superimposed '97', which is careless driving, and disposed of in the violations bureau, on a careless driving charge, fine of ten and five. I ask you to look at the face of the complaint and let me know whether or not you know who made that alteration. Answer, I did. Question, That was changed from drunken driving to careless driving? Answer, I did."

Mr. Aiken: Go to page 94.

The Court: About one quarter way down 94 is Linwood Finney. We'll go to that.

"Question, The next is 5537, dated May 28th, 1960, Linwood Finney, again '97' seems to be written over '50', when the drunken driving statute is inserted and added was 'driving too fast for conditions' and this was disposed of in the violations bureau as ten and five on a charge of careless driving. Our records indicate that Finney was examined for drunken driving and I ask you to look at this complaint and any other parts that you wish and let me know if you can, who made that alteration. Answer, I did. Question, You made the alteration? Answer, Yes. Question, And you received the monies? Answer, I did. Question, And so on? Answer, Yes. Question, And I call to [fol. 370] your attention the fact that the defendant forfeited fifty-five dollars bail for disorderly conduct. The record indicates that there was fifty-five dollars deposited, which was forfeited by this fellow, Finney. Answer, Yes. Question, Would you know what that fifty-five dollars was put up for? Answer, Well, I guess that's all that the chief accepted from him, I don't know. Question, You forfeited? Answer, Unless he told them if you go to court, there will

be fifty-five dollars and fifteen dollars, and whatever that is, and he didn't show up. It went in as a forfeit.

Mr. Corbin: You want to change your docket there on 6-22-60.

Question, How was the fifty-five dollars applied? Answer, Failed to appear, and he had a receipt on it and forfeited fifty-five dollars, that would be in there. Question, What happened to the fifty-five dollars? Answer, It went to the Borough. When it is forfeited, it goes to the Borough. Question, And this was bail for appearance on the drunken driving charge? Answer, He was told his fine would probably be fifty-five dollars and accepted it as bail and then he just forfeited and all disorderlies go to the Borough. Question, But the bail was for appearance for the drunken driving charge? Answer, No, the bail was for appearance in the disorderly. Question, Do you know how much with this case? Answer, No, I don't. Question, No sense of me trying to draw a lot of conclusions and opinions. Answer, What was on that, that was changed to careless? Question, Yes, careless driving. Answer, Whoever took the bail must have took for that and the doctor, if he was examined by the doctor, and broke it down for me. Question, Next is 5611, dated June 2nd, 1960, John Gregal and again '97' is written over '50' which is the drunken driving statute, and, 'too fast [fol. 371] for conditions' and disposed of through the violations bureau and you indicate a fine of ten and five for careless driving and fifty and five for disorderly conduct. Do you remember anything? Answer, It just follows right here in the book. Question, Do you remember anything particularly about it? Answer, No, I do not. Question, But if the pattern were followed you get your instructions to change from Chief Garrity and he got the money and turned it over to you."

Mr. Malandra: I object and ask that be stricken.

The Court: All right. It will be stricken. Now, let's go to the middle of 98.

"Question, Number 5759, dated November 9, 1960, Robert A. Franklin and again apparently a change from '50' to '97' and the addition of 'driving in and out of traffic over line' a court action, plea of guilty ten and five, signed S. Teitelman and your receipt indicates receiving ten and five and I ask you whether or not that signature is of Judge Teitelman. Answer, No it is not. Question, You wrote that? Answer, Yes. Question, On the front of the complaint there is some change. Would you know who made those, Mrs. Naglee? Answer, I did. Question, You made them? Answer, Yes. Question, And this again was one of those cases. Answer, That's right."

Mr. Malandra: I ask that that be stricken "and this again was one of these cases".

The Court: I'll overrule it.

"Question, Number 5157, dated October 4, 1959, Robert T. Killian, again it is apparent that the '50' has been here [fol. 372] and written over '85' in black ink, incidentally, and disposed of by the court action, signed as S. Teitelman and ask you whether that is his signature or whether you signed it? Answer, I signed it. Question, He knew nothing about this, in other words, he didn't know anything about it. Answer, No, he didn't know anything about it. Question, Do you know who made the change? Answer, I made the change. Question, From drunken driving to careless driving? Answer, No, passing on shoulder. Question, In this case, there was two hundred fifty dollars bail put up by A. Del Rossi, conditioned on the appearance of the defendant in court on the 21st of October, and this matter was disposed of on October 14th which is a week before the appearance date. Do you have a record of having received the two hundred fifty dollars or any record of that bail transaction? Answer, No, I don't. It was paid to James Lee. He's one of our dispatchers. I don't know, I didn't. I must have received it the same day as I did the others. Question, What did you do with the cash bail when you received it? Answer, Cash bail? Question, Yes, You de-

posited it? Answer, I applied it. Question, Well, let's say there was a drunken driving case, and all the arrangements disposed of, and what did you do with the cash temporarily? Answer, Well, sometimes I didn't deposit it. I didn't deposit it as often as I should have, I never knew this was going to happen."

Mr. Malandra: Now, Your Honor please, I object, The question "Well, let's say there was a drunken driving case" and so forth.

The Court: No, I think he is talking about anybody else's. Overrule the objection.

[fol. 373] Mr. Malandra: Your Honor takes the objection I make to this entire statement because each question gets asked, there's a large long statement made by the Prosecutor and I know each one of them, he makes a statement that is absolutely prejudice to the defendants. To the beginning of each summons, and once again I show you and once again I show you, where it's been altered, and so forth, and I think the questioning like this, which says that a hypothetical case where there is no arrangement—

The Court: All right, we'll throw it out then, I don't think that's important. Now, where do you want to throw it out to?

Mr. Malandra: Starting at the next page is all right.

The Court: All right, continuing.

"Question, Well, I mean you have no recollection of this, and there is no record in your books of whether DelRossi got his money or not? Answer, He evidently did, or you wouldn't have the white slip. See, when they get it back themselves, like someone puts it up, they turn in that white slip and they get their money back. Question, Don't you ever get receipts or insist on receipts when you pay money back from the individual instead of accepting this back, you could say 'Received from the Borough of Bellmawr?' Answer, He had his proof that we had it, the proof he paid the two hundred fifty dollars. Question, You depend on the fact you gave him a licking in court in case he claims he didn't get it back? Answer, We don't know. Question, Doesn't the

administrative office regulate this procedure for money returned? Answer, Where I return bail, I return it in check. I have a municipal court account and you don't get that [fol. 374] cash anymore. You get it back by check. Question, Killian, you did make the change? Answer, Yes, I did."

Mr. Aiken: That's the end. I would like to ask the court to refer to page 193 of the Garrity statement of Mr. Kaplan.

Now, from 193, 194, 195, on the bottom of 195 right through what happened to the doctor's reports, I would like to ask the court to admit that portion of—

The Court: The answer is no, I won't. You agreed that you were going to refer to the specific cases so under the circumstances, the answer is no. Denied. Anything else? Jim, I mean, as I understand it you all agreed to certain things. Now we start fooling around, we'll be piddling around here for the next week. No, do we have anything else?

Mr. Aiken: That's all.

Mr. Malandra: That's all.

The Court: All right, two o'clock. Court is adjourned for lunch.

(Noon recess.)

(Jury roll-call taken, everyone present.)

The Court: By way of explanation, we have been a little busy. We have been bringing you in and chasing you out and so on and so forth. Well the purpose of course, of [fol. 375] that and may I say again counsel both for the state and the defense have been most cooperative, we have been attempting to shorten the case and as I say, counsel as far as both of them are concerned, have been extremely cooperative and I think from now on, we're going to need the services of the jury quite frequently. And again, as I say, I appreciate the efforts of counsel to cooperate with the court. Now, I think perhaps we have arrived at that part of the case that has to do with the reading of the statements.

Mr. Aiken: Yes, Your Honor.

Mr. Malandra: Yes sir.

The Court: My suggestion, therefore, would be that Mr. Garifo, the certified court stenographer undertake to read the statements to the jury. I know he has had considerable experience in a situation like that, he knows all of the rules and regulations, not to emphasize but rather deliver the matter in just an ordinary tone of voice without stressing one part or the other. Mr. Garifo, you have already been sworn, it will not be necessary to swear you again.

IN THE SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

Docket No. A-228-63

STATE OF NEW JERSEY

VS.

HELEN B. NAGLEE, EDWARD J. GARRITY, and EDWARD VIRTUE,
Defendants-Appellants.

CRIMINAL ACTION

ON APPEAL FROM THE CAMDEN COUNTY COURT

Joint Appendix

[fol. 377] LAWRENCE GARIFO, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Mr. Garifo, I understand you have before you a transcript dated November the 10th, 1961, which you took down and have later transcribed?

A. Yes sir.

Q. And will you tell us where that transcript was taken?

A. In the fire hall in Bellmawr, New Jersey.

Q. And who conducted the taking of the transcript?

A. Mr. Rigg, Deputy Attorney General at the time.

Q. And will you turn to page 62 of that transcript, please, whose testimony appears on page 62?

A. Edward Virtue.

Q. Now, during the course of that last two or three days, we have been marking certain portions of that transcript and I think the judge has indicated on the pages which portions you are to read to the jury. I wonder if you would be kind enough to start reading those portions from Mr. Virtue's statement.

The Court: If I understand it, you asked him to read beginning at page 62 the alleged statement of Mr. Virtue, is that correct?

[fol. 378] Mr. Aiken: That is correct, Your Honor.

The Court: You may proceed.

(The following material being directly quoted from transcripts by the witness.)

"Edward Virtue, having been duly sworn, was examined and testified as follows:

By Mr. Rigg:

Q. You are a sergeant?

A. Detective.

Q. As you know by now, detective, I am working under a Supreme Court order issued last June directing me to investigate certain irregularities in the handling of motor vehicle matters in the municipal court here in Bellmawr, together with various persons having any connection with the court including the police department. That is why I scheduled this day to ask you questions pertaining to this investigation. Before I do, I want to advise you anything you say must be voluntary, of your own free will, without threats or coercion or promise, or reward and anything you do say may be used against you or any person in a subsequent criminal proceeding, or proceedings, in the courts of our state. You do have under our statutes, as you may know, a privilege to refuse to disclose any information which may tend to incriminate you. However, if you make such a disclosure, with knowledge of this right and without coercion, you thereby waive this right or privilege with regard to any phase of this investigation. This right or privilege that you have is limited to the extent that you as a police officer once sworn and asked questions pertaining to your office and your conduct therein, if you refuse [fol. 379] to answer, you may then be subject to a proceeding to have you removed from the department.

A. Right.

Q. How long have you been on the Bellmawr Police Force?

A. Total of about eight years, four and a half years regular, the rest as a special officer.

Q. How long have you been a detective?

A. About three months.

Q. Now, I assume that you are aware of the specific problem about which this investigation is concerned here?

A. Yes.

Q. I also assume that you are aware of the practice of alteration of motor vehicle summonses here in Bellmawr?

A. I am aware of the alterations.

Q. Yes?

A. Yes.

Q. Am I correct in my assumption that you participated in this practice of alterations?

A. Yes.

Q. Would that participation be in relation to summonses issued by you and other officers or just in relation to your own?

A. My own.

Q. Did you in the years that you have been on the force at any time, seek to have a summons issued by another fellow officer altered?

A. No. Wait a minute, let's go back now. You say in my whole course as a police officer?

Q. Yes.

A. It's possible that I might have went to another one, but to be specific, I couldn't answer that.

Q. Why?

[fol. 380] A. Well, there's a lot of tickets.

Q. Is there a lot of ticket fixing?

A. Well, I mean, you see what you have there—

Q. You're saying you don't recall ever seeking having a ticket issued by a fellow officer on this department altered, is that what you're telling me, you don't recall it?

A. No.

Q. Have you ever sought the alteration of tickets by officers in departments other than Bellmawr?

A. No.

Q. I show you complaint number 5157, issued on October 4, 1959, to Robert T. Killian, charging the defendant with driving while under the influence, which charge was thereafter changed to 39:4-85, receipts showing fine of five dollars and costs of five dollars, for passing on shoulder and indicates on the back that it was done apparently in court. Do you recall that?

A. No sir, I don't recall—I don't remember.

Q. Approximately how many drunken drivers summonses do you issue in a year?

A. I couldn't answer that.
Q. Approximately.
A. I couldn't answer that.
Q. Twenty?
A. Maybe."

The Witness: That is the end of Mr. Virtue's statement.

Mr. Aiken: Would you proceed to Mrs. Naglee's which I believe starts on page 197.

The Witness: Yes. "Helen B. Naglee, having been duly sworn, was examined and testifies as follows: By Mr. [fol. 381] Rigg: Question, Mrs. Naglee, as you know, I am working under a Supreme Court order dated last June, whereby or whereunder I am directed to conduct an investigation of certain irregularities in the handling of motor vehicle cases in the municipal court, and apparently the police department here in the Borough of Bellmawr. And, it is pursuant to that order that I have asked you to answer some questions which I want to put to you. Before I do, however, I want you to be fully aware of the fact that anything you say must be voluntary and of your own free will and accord without any threats, promises, or reward or coercion. You do have a privilege to refuse to make any disclosures, or give any answers which tend to incriminate you. Things that you tell me today may be used against you or any other person in a subsequent criminal proceeding. That is why you have that privilege under the law. However, if you do answer a question, and make a disclosure, you are by so doing, you thereby waive this right or privilege that you have in relation to the entire investigation. Do you understand that? Answer, I do. Question, And understanding that, are you willing to proceed then? Answer, Yes. Question, All right. Now, am I correct in my understanding that you are the violations clerk here in the Borough of Bellmawr? Answer, That is correct. Question, And you are also the court clerk? Answer, That's right. Question, How long have you

been court clerk? Answer, 1947. Question, Continuously? Answer, No, six months in 1960 I was replaced by Mrs. Ferry. Question, As court clerk? Answer, Yes. Question, And did Mrs. Ferry carry on the duties and responsibilities and functions as such? Answer, She didn't have the full responsibility. They never had. At the request of both the auditor and the judge, to have my books audited before I turned them over to her, and they never seen fit to have [fol. 382] that done so I continued handling the books, but she sat in court and then she would come in the next morning and go over and I came out at night to lock up the monies that were taken in because she didn't have that authority. Question, Taking the money or lock it up? Answer, See, to lock, she didn't handle any money. When a fine is paid Mr. Lee was deputized to accept the fine, rather than have it collected in the court. So then I wasn't allowed in court so I would, after the fines came in, I would take them then and then I would lock them up. Question, You say you weren't allowed in court, what do you mean by that, an order you couldn't go in the courtroom? Answer, There was a few of the councilmen were against me, being the court clerk, and it was they that were lax in not having my audit taken. Mr. Smiley was the new auditor that year and he insisted and I called Mr. Aiello, and he also said the books should be audited before I turned them over. They never saw fit to have it done, so I never turned the books over. I was responsible until they were audited. Question, Did those councilmen tell you or any of them tell you you couldn't go in the courtroom? Answer, I couldn't sit. I wasn't on the bench when the people came up. Instead of Mr. Lee collecting the fines, I collected them. Question, Am I correct in understanding all Mrs. Ferry did was sit in the court? Answer, She sat in court and then she came back the next day and she made entries in the docket. We don't do it after court because it was late and the next day she would come back and make entries in either the ticket docket or the criminal docket, and also

made out the monthly reports. I assisted her with that, and if there were to be any warrants issued, I did show her how to make a warrant and how to send them out. And I [fol. 383] let her make out the final notices. You know, where they don't appear. Question, Could you tell me what six month span that was in 1960, when did it commence approximately? Answer, she was sworn the 28th of April, and I think she took over the 15th of June. It took that long before they replaced me. Question, So she would have served from the 15th of June— Answer, Until December 31st. Question, Then you went back into your normal functions as court clerk? Answer, That's right. Question, During that six month span, then, from the 15th of June to January 1st, or the 31st of December, you say she made the entries in the court docket? Answer, That's right. Question, That would be the motor vehicle or the traffic docket and the criminal docket? Answer, Yes. Question, Did you make any during that six month span in the docket? Answer, Yes. Question, Now then, which ones did you make and which ones did she make, was there any agreement as to how that was to be handled or what? Answer, She made some and I made some during that time. Question, Now, which ones would she make. Did she make all of those which came into the court during her six month period? Answer, She didn't make any receipts at all. Question, No. Did she make the entries in the docket book after the disposition? Answer, After a court night, yes. Question, She would enter anything that happened in court? Answer, Yes. Question, During the daytime that people came in and paid the fines, that was handled through the violations bureau instead of by way of hearing, did she enter any of those? Answer, No, because she wouldn't be there for that. She only came back to do the court work, what had taken place in court and then she would go home. Question, You would take in the fines as violations clerk and then you would enter them in the books as court clerk? Answer, Yes. Question, And

[fol. 384] then you never turned any of those over to her to handle? Answer, No, and she only made the green cards that took place in court. She never did anything with the violations. Question, And my last question along these lines are do you know did she make any false entries pursuant to the operation which was going on there of altering summonses? Answer, No, she did not. Question, Not to your knowledge? Answer, No. Question, Do you know Mrs. Naglee, was she aware that this was happening or was there an attempt to keep this from her? Answer, Well, you would have to ask her that, because I wouldn't know. I didn't make any bones about it, I didn't—I made entries without consulting her, because I didn't feel I needed to consult her. To me, she still wasn't a court clerk because I was still doing the work. What she done was little trivial things, she didn't have the responsibilities because they didn't see fit to do it. Question, Well, my question again, perhaps it was two-fold and maybe ambiguous. Did you affirmatively attempt to keep her from knowing that these alterations were occurring? Answer, No, I just did what I did in ignorance of her, because as she would come in in the morning and would have them, our receipts are numbered and that is the way she would enter it into the docket, and then when she was doing that I would start to make the disbursements either went to the state, county or borough. Question, And you say that during that six month period, she made up the report for the judge, is that correct? Answer, With my assistance. She never caught on to it. You mean the monthly reports? Question, Yes, she wouldn't— Answer, She couldn't do it on her own. She never could grasp it. I made samples that the state gave us, but she never grasped those to do on her own. We worked it together. Question, What is shown in the [fol. 385] monthly report, what data goes into the monthly report? Answer, Do you mean the state, county or the ones that go to Mr. McConnell. Question, The ones that go to McConnell. Answer, The fines and costs that were

taken in traffic. Question, Was it all traffic, does it show all the traffic fines? Answer, Yes, fines and costs go in one column, and borough parking in another column, and criminal go in another column. Question, Now, how were these figures compiled and placed in the columns. Were they done by a reference to the summonses and complaints. Would you have those together for the month and then go over those and enter them into the report? Answer, Well, we also kept a work sheet on what took place in court, and then broke it down with the ticket control, where you have to refer back to the ticket control, the ticket that was issued and when it was disposed of. Question, What I am getting at, is there specifically and direct reference as double checked to the summons when that report is made up? Answer, I don't know what you mean. You mean take out a whole month's tickets? Question, That's right. Answer, Well, you have your disbursement book, you would refer to your traffic ticket book, and then we transfer the monies in the traffic cash book to the regular disbursement book. We carry two sets of books. Question, During the course of working, and making up the monthly report, would Mrs. Ferry have had occasion to see the summonses for the month? Answer, Yes, she had wanted to see them. They were there. They were always available to her. Question, They were available? Answer, Yes they were. Question, Now, in the course of her doing this, would she have reference to them other than being available, would she naturally go to them or did she— Answer, She would have no use because she didn't handle the monies. [fol. 386] Question, So that you don't know whether she ever saw any of these? Answer, No. Question, She wouldn't normally in the normal course of functioning as court clerk? Answer, No, not what her duties were. Her duties were to be the whole thing. Question, But she never just never assumed them? Answer, Mr. Stanton was going to see that the books were audited, but for some reason, he never came around and I told Mr. Aiello, and he said

definitely not to turn the books over to anyone until I had an order. I talked to Mr. Smiley, and he told me the same thing. The judge talked to Mr. Stanton and asked him would he see the books were audited so that they would be turned over, so they never did it and I wasn't going to get on my knees and beg them. Question, Did you have any objection to Mrs. Ferry taking over the position of court clerk? Answer, The woman personally, no. I felt very sorry for her. I was a little resentful for it, they did it for spite. Question, That would be these councilmen? Answer, Yes, I felt it was done for spite. Question, Would you feel reflecting back over the last six months, do you feel subject to this resentment which you naturally felt, that you cooperated with her? Answer, Believe me, I tried to show her everything that I could show her so that she could never say I wasn't showing her and on the back of the tickets, can I touch this— Question, Yes. Answer, Where it would be like, here like you know, it would be in here where sometimes if she would copy, just to make the green cards, it would be like I will say James Lee, they put on here J. L., H. B. N. or J. L., H. B. N., whoever collected it. She would probably be there and I would ask her if she would put M. F. and she said no. I said you are making out the ticket, that is the reason I am asking you. I am responsible, my initial would be first because I took it. In any case there was any reference to why her initial [fol. 387] would be on there. Question, My question is, Mrs. Naglee to the extent you did do it—"

Mr. Malandra: What page are you on, please?

The Court: All right, gentlemen, I'm referring you to page 208. Directing your attention to about one quarter down the page, the last sentence being "in case there was any reference as to why her initial would be on there." Then I have on here stop and go to the bottom of page 215. Is that your notation?

Mr. Aiken: That is right.

Mr. Malandra: That is right.

The Court: And, on page 215, it says start here.

"Question, My question is, Mrs. Naglee, to the extent you did do it, you didn't feel guilt about having done it, when you did it, and was that because you felt that under the circumstances you were morally justified in doing it or did you feel in addition to feeling morally justified, that you were legally justified in doing it? Answer, I didn't take that into consideration, I just knew the chief, that guy probably came in for some reason and his wife or somebody told him a sad story, and I was as ignorant, I am ignorant, and I changed it. Question, Did you know at that time that it was unlawful to change it? Answer, Truthfully, no, I didn't think it was unlawful. Question, Did you feel that under the law you had the power to do that? Answer, Well, shall I say I didn't have any regrets when I did it. Ques-
[fol. 388] tion, That is not my question. My question is did you feel that under the law you had the power to do that? Answer, I didn't take that into consideration, I just changed it. Question, Now then, what I am trying to ascertain, I am only concerned about you at this time, I will take to Chief Garrity, to the extent you considered him your boss, you knew at the same time that he had no lawful right, did you not, to ask you to change these? Answer, Well, I will tell you the truth, I didn't take that into consideration, he had a right or not a right. I guess you want me to say that he had no legal right, but I didn't stop to think of the legal terms of that offense. I just did what I done, and shall I say I am ignorant as to legal rights. Question, No one ever indicated to you did they, Mrs. Naglee, that this was lawful, that this was in the province of the Chief of Police and clerk to change summonses? Answer, No, neither did they ever say that it wasn't. Question, Right. Now, Mrs. Naglee, on some of these summonses, as we discussed before, in the space for 'court action,' there are notations of a date where there was purportedly an appearance, and a plea of guilty and disposition of guilty, designation of fine and cost, and the purported signature of the judge. When,

in fact, of course, the defendant never appeared in court. Answer, That's right. Question, Did you do that? Answer, Yes. Question, To the extent you didn't feel guilty about this, Mrs. Naglee, did you conduct yourself in this area openly before the judge? Answer, Well, I think I told you before that while the judge probably would be hearing a criminal case or something, I never had any guilt, I just did it on the back while he would be handling other cases. I never openly showed him anything like that. Question, Why not? Answer, Well, of course I did not. Question, I know you didn't, what was the reason for not having done [fol. 389] so? Answer, Because he was busy. Question, You are under oath. Answer, I know, and I am telling you the truth. Question, That is the only reason? Answer, I didn't feel it was necessary. I did it and there I am going back to ignorance again, I heard it was perfectly all right to do what I was doing, as long as the Borough got theirs, I was interested in the Borough, to tell you the truth. Question, You have already said, however, though again under oath, that you thought it was all right what you were doing, morally, but you knew you didn't have the authority to do it. You have told me that. Answer, I have admitted that. Question, Now then, why didn't you let the judge know what you were doing, or did he? Answer, No, I didn't let him know, no. Question, Why not? Answer, Mr. Rigg, I just didn't tell him. Question, Why? I know you didn't tell him, I'm asking you why. Answer, Well, there is only one answer, because I did not. Question, Do you have authority to sign the judge's name? Answer, Yes I do. Question, Do you have his authority to sign his name to disposition record on the back of the motor vehicle complaints? Answer, Well, I have done it, but since June 2nd, he has signed everything, he's got everything, every little detail and everything else. Question, He keeps to himself now. Prior to that time, did you have authority to fill in the court action? Answer, Many a time I sat there, yes, would go on with something, I would mark the back of it, and I think you will find some other cases, they're not all

illegal, but after this investigation started, Saul will have to admit, even for no appearance, I would mark it 'no appearance' while he was working, and I would mark it 'no appearance' and the date, so we could send the final notice. But he does all that now. I will be truthful, I don't think he thought that I was doing it. Question, To the extent [fol. 390] that he would tell me that you did not have the authority to sign his name, that would not be correct? Answer, if he did, that would be the first time. I signed all, with the exception of the monthly statement, until Mr. Heine became Prosecutor, I signed them up until then for Judge Dzick, for Charlie Rudd, and Carl Auerbach, but when Mr. Heine, the report went in there one time it was a joke or something, he said, 'From now on, I'll sign them.' I would go over it with him and show him what was what. You say as to signing his name, I wouldn't say every day, but if there is a commitment for someone to go to jail, I signed them all even if he is here, I signed his name and mine as the clerk. If we put someone in Lakeland, I signed them. He has always authorized me, and all the previous judges. Question, How long has he been a judge? Answer, Oh dear, he finished out. Question, Roughly, approximately? Answer, Five, I don't know. Question, Approximately five years? Answer, Three years is up until January '60, and he finished out Judge Dzick. He had to resign on account of going on the bench. Question, So it would be four or five years? Answer, Yes. Question, During that four or five years, did he ever ask you to alter one of these summonses? Answer, Did he ask me to alter them? Question, Yes. Answer, No. Question, Never sought it? Answer, No, he did not. Question, Do you recall in the last two years while you were acting as court clerk in open court, his amending a moving violation to a parking offense? Answer, With him amending? Question, Yes. Answer, No, I know he has amended a ticket, but I don't think he ever amended a ticket to parking. Question, Do you know? Answer, He might have amended speeding or

something. Question, Reduced the speed or something predicated upon the evidence? Answer, Yes. Question, [fol. 391] Do you know, Mrs. Naglee, whether these summonses were ever altered after they were actually handled in court? Answer, After he had heard them? Question, Yes. Answer, No. Question, Have you ever asked the chief of police here whether consideration could be given resulting in an alteration at your request as opposed to one of the officers? Answer, You mean that I — Question, That you acted as the intermediary or interceder. Answer, I don't recall. Question, If you had, would you recall? Answer, I think I would. Question, Have you ever altered a summons or complaint without the chief's knowledge? Answer, No. Question, In relationship to the issuance of bail receipts for bail which has been posted by defendants, I'm impressed by reviewing the papers here that very often bail is posted at night when you are not on duty. Answer, Yes. Question, And it would appear that whoever is on the communications or on the desk that night, the dispatcher, issues the receipt. Am I correct in that? Answer, That's correct. Question, Now, when you come in in the morning, are you then apprised of what has transpired the night before in relation to the posting of bail? Answer, Yes. Question, What do you do? Answer, What do you mean what do I do? Question, What do you do when you are told about it, are you given the money and receipt or what? Answer, Yes. Question, What do you do then? Answer, Well, when we were doing it in triplicate, with those yellow gadgets that you picked up. Question, Yes. Answer, That would be held until the hearing night. But then, now everything is deposited. Question, Yes. Did you make a record when these bail receipts were turned over to you when the cash was turned over to you in the morning, did you make a record in any book or permanent recording of bail? Answer, No. Question, Just put it in what, a drawer? Answer, In a separate [fol. 392] folder, the ones that had bail attached to them.

Question, Would the cash be right in the folder? Answer, Yes. Question, What would that be attached to, the complaint and summons? Answer, And with the bail receipt. Question, Now then, if a man appeared, and, say he was found guilty, you would take the fine out of the bail and give him the balance in cash? Answer, On the return of his receipt. Question, And if he didn't have a receipt to return, what would you do? Answer, Well, if found guilty, there will be times when they would say, 'I don't have it,' we took care of it that way. Question, Took care of it what way? Answer, Gave him the official receipt for the fine or costs. Question, And give him the balance if any? Answer, That's correct. Question, Did you get from him a receipt for the balance of the money? Answer, No, I did not. Question, I assume the same thing could happen where the man was found not guilty. Answer, It would be returned. Question, He lost his receipt? Answer, Yes. Question, You would give the cash anyway and you would make him sign a receipt or make a notation on the copy of your receipt that he had gotten this money back? Answer, Well, you mean—now, a man has posted bail. Question, He's been found not guilty, he wants his money back, and he doesn't have the copy of his receipt. Answer, Well, he'd get his money back. Question, And would he sign a receipt to protect you? Answer, No. Question, There would be no notation on the yellow copy of the receipt that he would have to sign? Answer, I don't know, you have them. Question, I don't have them all, Mrs. Naglee. Answer, I think the bail would have been returned. Very rarely he would put up bail and got it back. Usually the bail would've been to cover like the fine or costs, or else it was a bondsman and, of course, there was no money there. Question, Mrs. Naglee, in any other cases involv- [fol. 393] ing alterations of summonses, has this procedure been followed to your knowledge, of accepting bail and then applying that bail to the fine. Answer, You mean dividing it between the traffic and making it disorderly?

Question, Yes. Answer, Well, there's been a couple of cases, I don't know. Question, There was a case involving a Philadelphia resident, wasn't there? Wasn't there, Mrs. Naglee? Answer, Was there? Question, I am asking you. Answer, I will have to go over there and look. Question, I am asking you whether you recall. Answer, Ridiculous. Question, What was that? Answer, What do you want to know? Mention the name and I will tell you whether the name sounds familiar. Question, No, do you recall, Mrs. Naglee? Answer, Let's see. You mean Mr. Stanton's friend. Question, Do you recall a Philadelphia resident who posted bail in a drunken driving offense? Answer, Yes. Question, What happened to the balance of that money? Answer, It is in the safe. Question, This minute? Answer, Right this minute. Question, With his name on the envelope? Answer, yes. Question, How many other envelopes do you have in the safe with money? Answer, I have but two. Question, All right. Now, when I was asking about this Philadelphia resident, you said do you mean Stanton's friend. Is that Stanton the councilman that to whom you have reference? Answer, Yes. Question, Will you explain the circumstances surrounding that? Answer, Since this came up, I don't know anything about Mr. Stanton's friend. Question, What have you heard? You mentioned that, why did you mention it? Answer, I mentioned it because I understood he was a friend of Tom Stanton. I had heard since this came up, Tom, that he was a friend of Tom Stanton and Tom— Question, Interceded on his behalf, is that what you are saying? Answer, No, [fol. 394] he did not intercede. Tom tried to railroad Mr. Garrity, in my opinion. Question, How? Answer, He tried to get something on him. He was so provoked that he didn't make Director of Public Safety that he is out to hurt anyone or anybody, and to me, I may be prejudice, but I think it was a lot of this is all done for spite. Question, A lot of which is all done for spite? Answer, A lot of this investigation. I could be wrong, I could be wrong.

Question, Maybe my inference is not correct. Are you saying I'm being spiteful? Answer, No, I don't mean that. I realize you have a job, but I mean I think it was done, I could be wrong, but I have become very prejudice that Mr. Stanton is out to hurt anybody because he made the remark when he didn't get the Director of Public Safety's job, well, nobody was going to be happy being director, so I understand. Question, We are getting a little far afield here. I am not concerned about that. What I am concerned about is why you said, 'Do you mean Mr. Stanton's friend,' and you named the name. I was talking about this Philadelphia resident. Answer, Yes, I understood he was a personal friend of his. Question, Did you also understand that he was looking into this matter with that fellow or what? Answer, No, I didn't hear that. But when I heard it was a discussion about—I know the envelope is over there, I just don't recall his name. Was it Randolph? Question, I don't know, Mrs. Naglee. Answer, Yes, you do know. Question, I do know? Answer, You do know. Question, I don't have the summons, Mrs. Naglee. Answer, Anyway, I can't recall his name, and I understood that he was a friend of Tom Stanton; that's all I know. Question, When did you understand this? Answer, Since this thing has been going on. I heard them discussing it. Question, When was that envelope placed in the safe, Mrs. Naglee? Answer, The date is on it. Question, [fol. 395] What attempts were made in contacting the defendant? Answer, I believe Chief Garrity asked him if he would return here to our headquarters and bring his receipt, he would give him the balance that was due him. Question, When was this? Answer, Whenever the date is. Question, And then you just never heard from the chap again? Answer, No, I didn't. I don't know. Question, You don't know whether the chief did but in any event, the money is in the safe? Answer, Yes. To my knowledge it is still there, because I am the only one that has the combination, so I think it is still there. Question, You say

there are just those two that are there? Answer, Yes. Question, I would like to get those two envelopes, and I want them marked. You want to take a break, and we will get those.

Mr. Rigg: So far as the questioning is concerned, that will be all. I want to question you again, but it will be some later time.

(Witness excused.)"

The Court: Well, this is rather tedious and I know it's tedious for the jury. It is extremely tedious for the gentleman who is reading and likewise for the stenographer, so suppose we take a short recess at this time. It will not be necessary for you to climb up or down those stairs, if you want to go back to the jury room, it's all right. If you don't you can trapeze back and forth out there in the corridor and we'll start again within a short time.

(A short recess is taken.)

(Jury returns.)

Mr. Aiken: Will you continue now, Mr. Garifo, with Mr. Garrity's statement.

[fol. 396] "Chief Edward J. Garrity, having been duly sworn, was examined and testifies as follows:

By Mr. Rigg:

Question, Before I get started, because of the lateness of the hour and other commitments, I will undoubtedly have to question you again, as well as Mrs. Naglee and perhaps one or two of the other officers. I would just like to establish a few things here quickly now. Before I do, however, you I know are aware of the purpose of the investigation of your being here today. Before I ask you any questions concerning this investigation into the alleged irregularities of the handling of municipal traffic violations by your department, I want to advise you that anything you say must be said of your own free will and accord

without any threats of promise or coercion, and anything you say may be, of course, used against you or any other person in any subsequent criminal proceeding in the courts of our state. You do have under our laws, as you probably know, a privilege to refuse to make any disclosure which may tend to incriminate you. If you make a disclosure with knowledge of this right or privilege, voluntarily, you thereby waive that right or privilege in relation to any other question which I might put to you relevant to such disclosure and this investigation. This right or privilege which you have is somewhat limited to the extent that you as a police officer under the laws of our state, may be subjected to a proceeding to have you removed from office if you refuse to answer a question put to you under oath pertaining to your office or your function within that office. It doesn't mean, however, you can't exercise the right. You do have the right. Answer, No, I will cooperate. Question, Understanding this, are you willing to proceed at this time and answer any questions? Answer, Yes. [fol. 397] Question, How long have you been Chief of Police of the Department here in Bellmawr? Answer, About eight years. Question, And were you on the force prior to that time? Answer, Yes. Question, How long have you been on the police department altogether? Answer, Fourteen years. Question, During that fourteen years, chief, when is the first that this practice of altering summonses started, as best as you can recall? Answer, Gee, I don't know, it goes back a few years, but it became more critical as we started using speed watch and things like that. Question, What was that, within the last two or three years? Answer, Yes. Question, Now, am I correct in my understanding that from talking with the other officers that was the practice or the policy within the department here that no summons and complaint can be altered without your consent? Answer, Yes. Question, So that as far as you know, every altered summons was in your files and my files had to have your consent? Answer, Yes, I would say so, yes. Question, There has been quite a bit of

discussion, chief, by the various persons with whom I've talked today, to the effect that they felt or seemed to feel that there was nothing wrong with what was going on and what was being done, but that you as Chief of Police, had authority to do this. Do you believe that you had authority to do this? Answer, No. Question, Did you ever say anything to any of the officers to indicate to them that you had that you do have such authority? Answer, No, I did not. Question, Did you ever indicate to Mrs. Naglee, as Chief of Police, that you had the right to downgrade summonses or alter summonses? Answer, I think Mrs. Naglee drew an inference or misunderstanding about the procedure altogether. Question, Why do you say that? Answer, Well, she actually felt every time something happened she would come to me instead of going to the judge [fol. 398] with it, anything at all pertaining— Question, I mean in relation to these alterations, did you ever indicate to her that you had authority as Chief of Police to alter the summonses? Answer, No, I never made it specific that I had the authority. Question, Did you ever do it generally as opposed to specifically? Answer, You mean alter them generally? Question, I asked you chief, whether or not you ever indicated to her that you had this authority, and you said no, you never told her specifically. Now, did you generally tell her that you had this authority? Answer, No, I don't think I generally didn't. Question, You are not laboring or you did not labor under the belief that she as court clerk or violations clerk had that right? Answer, No. Question, Now, Mrs. Naglee has indicated to me, Chief, that in no case was a summons and complaint ever altered after it was disposed of by the judge at a hearing. Now, does this also ring true to your recollection? Answer, After the judge disposed of it? Question, Yes. Let us assume that there is a hearing and the judge made disposition, to your recollection, was there ever an alteration subsequent to that time? Answer, Not that I can recall, no. You mean amending a sentence? Question, Changing a charge, changing a fine after the

judge set the conviction and the fine. Answer, No, unless it would be a circumstance like this, where the judge might have fined somebody and left them there to be committed in lieu of the fine, and then he was unable to get the amount up or something like that; that would be the only thing. Question, Then you reduce the amounts so he wouldn't have to be committed. Answer, Yes. Question, But you would never change the charge? Answer, No. Question, You would reduce the amount of the fine and Mrs. Naglee, I assume, would show that on the back of the complaint. [fol. 399] Answer, I would imagine she would. Question, Would you ask her to? Answer, Generally, I mean I did not even bother with it. If the judge made a disposition in the case, most likely, as I said, there was a problem, probably waited around the station and couldn't get up the amount. Question, You go to court quite frequently. Answer, Yes. Question, Do you recall in the years that Mr. Teitelman has been the judge, his ever in open court altering a charge involving an operating offense to a parking offense? Answer, No, I don't ever recall, no. Question, Now again, just so I am straight. All of these alterations, so far as you know, were done after having been cleared by you? Answer, Yes. Question, Chief, I have here two envelopes, one is on the police department of Bellmawr, New Jersey, stationery, and on the outside is written the name 'Scott'. On the back is written 'careless, ten dollars and five dollars, disorderly, one hundred five dollars. Doctor, twenty dollars. Total one hundred thirty dollars.' At the end, underneath the two hundred twenty-five dollars 'less one hundred forty dollars paid, balance eighty-five dollars.' You recognize this envelope? Answer, Yes. Question, This envelope is opened on the end? Answer, Yes. Question, Do you know how this was opened? Answer, I opened it over at the hall just now. Question, In my presence? Answer, Yes. Question, Inside the envelope is an original complaint charging Joseph H. Scott of 2510 East Clearfield Street, Philadelphia, Pennsylvania, with disorderly conduct, together with a copy of the receipt to

Joseph Scott, showing the payment of a fine of one hundred five dollars for disorderly conduct, on April 6, 1960, together with eighty-five dollars in cash. Is that what was in the envelope when you opened it? Answer, Yes. Question, Who put these items in the envelope? Answer, I gave [fol. 400] Mrs. Naglee the envelope, she put it in there. Question, Whose writing is this? Answer, Mrs. Naglee. Question, And the writing on the front? Answer, I put that on there. Question, The name Scott was written by you and the figures by Mrs. Naglee? Answer, Yes. Question, Now, when did you give this complaint and money and receipt to Mrs. Naglee, and what did you tell her to do with it? Answer, I told her to put it away. I said I told Mr. Scott, but I think that somebody might think that this guy was taken over, I think Stanton is friends or some relation of Scott. Question, You say Stanton, who do you mean? Answer, Thomas Stanton. Question, The councilman here? Answer, Yes. Question, You think what? Answer, I said 'Put it away, because maybe he will come in and demand it someday, and if it is in there' —well, if Mrs. Naglee wasn't there, I'd have to get her. Question, What does that cash represent? Answer, The guy originally posted I think it was two hundred twenty dollars the night Virtue picked him up. Question, Let's go back to that night. What was he charged with? Answer, Originally, he was going to charge him with drunken driving, and then he made it 39:4-97. Question, Did he charge him with drunken driving, did he write up a drunken driving summons? Answer, He had 39:4-50 on it, and then he run the test, if I could recall now— Question, Yes. Answer, And then he changed it to 39:4-97. Question, I see. What happened after that? Answer, Mr. Scott, I think called me on the phone and came down on a Monday evening or something like that, if I am not mistaken. Question, How much time elapsed between the time of the arrest and the time that he came down to see you? Answer, a couple of days or a week. Question, What happened when he came to see you? Answer, When he

[fol. 401] came to see me, he said, 'I am sorry, I have been taking some medicine.'

He said 'I know when the officer showed me the balloon and all that, it looked like he was trying to take advantage of me.'

I said, 'Well, did you submit to the examination?'

He said, 'Yes, I wanted to prove to him that I wasn't under the influence.' He said, 'I gave him a lot of stormy weather, I admit to it, and I am sorry about it.' Question, Then what happened? Answer, Then in the meantime, why I had heard through the grapevine where we was trying to take advantage of Philadelphia motorists, you know. Question, Yes. Answer, So I mean, I told him, I said, 'Mr. Scott, do you feel that we took advantage of you?'

He said, 'No, I don't now, that night I was burned up when he wanted me to take the test.'

And I said, 'Well, didn't it turn out in your favor?'

He said, 'Yes it did.'

Then I explained to him that we had a guy who we had prior to that and had the same thing, and he died in the hospital, and we suspected him of being drunk, and he was an acute diabetic. Question, Did Mr. Scott appear in court? Answer, No. Question, When was this decision made that he didn't have to appear in court? Answer, The night he came down there, I told him that he could come back for a hearing before the judge, and what the charge would be, disorderly conduct and careless driving. Question, Yes. Answer, Or if he forfeited, it was to be up to him, and I told him what the breakdown would be, you know, in the forfeit, and he said, 'Well, I don't know.' Question, What would the breakdown be in the forfeit, he would lose it all? Answer, I didn't want him to lose it [fol. 402] all. I felt after talking to the guy he was more reasonable than that night. Virtue was burned up and he felt, he was burned up at the guy and I felt that the guy wasn't a bad guy after talking to him. He proved to me he is a sickly man. Question, It was the understanding that

he wasn't coming back? Answer, Yes, generally. Question, And at that time, you told him what the total amount of the fines and costs would be? Answer, Yes. Question, Why wasn't he given the balance of the money? Answer, Well, because of this conversation that we had had. Question, Which conversation? Answer, About that we were supposed to be trying to railroad the Pennsylvania motorists, and I asked him did he believe that and he said, 'Well, if the man comes in here with you or your brother-in-law or something and demands this money, why I would just' —it is going on so darn long now, I'd like to be in a position to bring it out or if Mrs. Naglee is here to bring it out. Question, You have lost me, Chief, I am sorry. As I understand it, the defendant came in at a later date, some days after this charge? Answer, Yes. Question, And you reviewed the matter, and, because of the circumstances, you felt he shouldn't be fined as heavily as he might be if he were to go to court, is that correct? Answer, That's right. Question, You at that time, had two hundred twenty-five dollars of his money. Answer, Yes. Question, Which had been posted as bail? Answer, Yes. Question, Now, you reviewed with him the fact that he could come into the court and defend and take his chances of losing up to two hundred twenty-five dollars or perhaps more? Answer, No, I said it is according to what mood the judge is in. Question, He was risking money if he came to court, losing money? Answer, Yes. Question, Or in the alternative he could not appear which he would lose the bail. Answer, [fol. 403] Yes. Question, And you indicated in that instance the total fines would be one hundred forty dollars. Answer, Yes. Question, Leaving a balance of eighty-five dollars? Answer, Yes. Question, Now did he ask for his eighty-five dollars? Answer, No, it was the understanding that we would hold it. Question, Until when? Answer, Until, in other words, we were supposed to be taking him over for the two hundred some dollars and we would hold it for him until he came back or someone came in and demanded it on his behalf. Question, This is where I am

not following. You made it appear you were taking him over? Answer, Yes. Question, Purposely? Answer, Yes. Question, Why? Answer, Because we had heard this talk we were taking advantage of the Philadelphia motorists, but it was supposed to come from him, but he said, 'Now, I don't feel that way.' Question, Now, who knew besides you and Mrs. Naglee and the defendant that you had this eighty-five dollars? Answer, Nobody. Question, Well then, how would your keeping it prompt anybody to make a charge that you were taking him over? Answer, They thought he had paid more. Question, Paid more than what? Answer, The one hundred forty dollars, they thought he had paid, he had to pay two hundred some odd dollars. Question, If you made up a receipt for him of one hundred forty-five dollars, or two sets of receipts and gave him his change, and you have a copy of the receipt, and he has a copy of the receipt, don't you have your proof? Answer, Yes, I know it is wrong now. Question, It doesn't make any sense whatsoever keeping this money. Answer, I know. Question, The whole story doesn't make sense. Answer, That is the way it was. Question, Was this your idea? Answer, Yes, it was my idea. Question, When was this envelope put in the safe, Chief? Answer, Some time last [fol. 404] year, shortly after, within a week or two after that. Question, Were you to hold this forever? Answer, No. Question, As escrow funds? Answer, No. Question, When was he to get it back, when you had determined that the matter had died down sufficiently that you didn't think anyone would come in and make the charge? Answer Yes. Question, When do you think you would've made that determination? Answer, Maybe when Mr. Stanton went out of office. Question, You intended to hold this until he went out of office? Answer, Yes. Question, This goes back to March, 1960, that you took this money? Answer, Yes. Question, It's been sitting here over a year, year and a half. Answer, Yes. Question, Were you going to sue Stanton then for making false charges against you? Answer, He hasn't made any. Question, If he had, was that

your plans? Answer, No. Question, What would you do? Here is the money you have been holding it for a year? Answer, Principle involved. Question, When was the last time you talked to Mr. Scott? Answer, I guess, whenever he came down here that night, I can't say when it was, Monday night or something. Question, You say he is a friend of Stanton or Stanton is a friend of his? Answer, Stanton is a friend of his brother. Question, Couldn't you accomplish the same thing by telling him to tell Stanton how well he was treated? Answer, That's the way it was. Question, This was the drunkometer that made the determination he wasn't under the influence? Answer, I think the drunkometer or the doctor. Question, Who was the doctor. Answer, Doctor Cooperman. Question, Now, Ed, in relation to this business of posting bail, and getting receipts, and thereafter having the summonses altered for lesser offenses. Answer, Yes. Question, And recording of a fine less than the bail that was posted, how many times [fol. 405] has that been done? Answer, I'd say maybe four or five times. Question, Now in those cases, other than these two where the fine monies were less, what happened to the balance of the money? Answer, Well, I don't know if it was left. Question, Wasn't there another one in Philadelphia, where the amount of the fines were less than the bail, one that was taken care of? Answer, How long ago? Question, About a year. Answer, Scott, I don't recall."

The Court: All right, gentlemen, at this time we're going to adjourn for today. Instructions to the jury to return to 324, at quarter of ten tomorrow morning. Spectators remain seated until the jury leaves. You may leave.

(Whereupon court is adjourned for the day.)

May 7, 1963.

Camden, New Jersey.

The Court: Now, when we finished yesterday, we had Mr. Garifo reading and he had completed the reading of the alleged statement of one of the defendants, and now I think there are three more statements, is that correct?

Mr. Aiken: That's correct, Your Honor.

The Court: Are you ready to proceed with that part of the case?

Mr. Aiken: Yes.

The Court: Mr. Garifo, you have already been sworn.

[fol. 406] LAWRENCE GARIFO, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Mr. Garifo, I think you will have another statement of Edward J. Garrity, December 4th, 1962?

A. Yes sir.

Q. I believe that is similarly marked in the fashion that the court has deemed proper to read. I wonder if you would be kind enough to start reading these portions of Mr. Garrity's statement.

A. Yes sir.

"Interrogation commenced at 6:30 p. m., Tuesday, December 4th, 1962.

Edward J. Garrity, Chief of Police, Borough of Bellmawr, County of Camden, State of New Jersey, sworn:

By Mr. Kaplan: Question, Chief Garrity, of course the background of this is the idea that in Bellmawr there was a policy or practice of what is commonly known as fixing tickets which meant altering or changing of traffic tickets and I believe that you are familiar with the fact that that is something that has been suggested. Now, I would like to

go over these. Before we go on, I explain to you we are working on a Supreme Court order dated last June, directing originally the Attorney General to investigate the municipal court in Bellmawr and now it has been referred to the Prosecutor of Camden County for further investigation to supply facts that were not obtained by Mr. Rigg in his capacity as Deputy Attorney General concerning irregulari- [fol. 407] ties in the handling of motor vehicles. There are some questions we wanted to ask you and before I do, I want to advise you that anything you say must be voluntary, of your own free will and accord, without threats, promises or coercion. Anything you say may be used against you or any person at any subsequent proceeding in the courts of our state. You do have the privilege under our laws to refuse to make any disclosures which you feel may tend to incriminate you. Now, shall we proceed? Answer, Yes sir. Question, Do you understand your rights? Answer, Yes sir. Question, First, I'd like to go into some of these tickets one by one and ask you some questions. It may be that you will want to look at these tickets, Chief, and I have here a ticket issued out of the munincipal court of the Borough of Bellmawr in the nature of a complaint number 5453 and in the future as I go through these tickets, I will not indicate that they are from municipal court of the Borough of Bellmawr. We will assume they are and issued out of that court and directed to the person whose name I will mention, and for the charge I will mention. The questioning will involve apparent changes and the reasons why they were made. And, by whom they were made and under whose direction and that will be the general tone of this inquiry tonight. Answer, Yes sir. Question, Are you in a position to say that by reason of this so called policy or practice that only one person made these changes? Answer, Yes, one person made them. Question, One person made the changes and that came about by reason of a direction probably by you as Chief of Police in charge of the police? Answer, Yes. Question, In which the rule was laid down that no ticket could be changed or

altered without your direction and without your authority, is that so? Answer, Yes sir, it worked that way. Question, That is substantially or absolutely correct? Answer, Yes, [fol. 408] that is right. Question, So that in each of these cases, which I will show you, that practice was followed as far as you know? Answer, As far as I know, yes. Question, Now, these officers who made these original complaints on which summonses issued were they required to be interviewed and their consent obtained before you directed Mrs. Naglee to make these changes provided you agreed the change to be made? Answer, Yes sir. Question, All right, next is summons 5291, dated November 29, 1959 and the defendant, Phyllis M. Zippel. Are you familiar with that one? Answer, I don't know, she is a housewife or something. Question, You don't remember that one. Somehow I get the impression she may have been a nurse, however I don't know. Housewife is correct, that's correct, one hundred twenty-five pounds, female, and she has been charged originally with driving while under the influence of intoxicating liquors. Answer, Was she examined? Question, Yes, she was. She was charged originally with driving while under the influence of intoxicating beverages, and that was changed to section 97. Answer, I never spoke to her, Prosecutor. I don't recall the case. Question, You know who paid the doctor? Answer, No, I don't. Question, Is there any possibility that these changes were done behind your back where you didn't know of the changes, is that what you are suggesting? Answer, No, I'm not suggesting. Question, It could've happened, I suppose. Answer, It could've happened, but I'm not suggesting that. I am not passing the buck. Question, Well, there's no sense in being a hero about these things. Answer, I'm no hero, but what I can't remember— Question, This wasn't brought to your attention as far as you remember and you have a pretty good memory. Answer, It was brought to my attention, I don't know how, whether she was separated [fol. 409] from her husband, whether she was having troubles at home, I don't know whether she was working

to keep her children, I mean I'm trying to think what it was. Question, She lived around Fairview, 689 Morgan Avenue. That wouldn't mean anything to you? Answer, No, what does it say for occupation on there? Question, Housewife, going north on Kings Highway. Answer, I don't know whether she was working, I'm not sure. Question, You have no clear recollection? Answer, Not a clear recollection. Question, Do you have a dim recollection? Answer, Not even a dim one, no. Question, In other words, something could've happened that you don't know about? Answer, I know about it, you mean it was done without my knowledge or something? Question, Yes. Answer, No, I wouldn't say that. Question, Was this done with your knowledge? Answer, I know that it was done, but I don't know just how. Question, You know the change was made? Answer, Yes. Question, And you accept the responsibility of having authorized it to be made? Answer, Yes, I will accept the responsibility. Question, Are you doing that to protect the officer? Answer, No, I am no hero, but I mean I am truthful. Question, You don't know the nature of the doctor's reports? Answer, No, I don't. I mean I could probably talk it over with the officer and probably refresh my mind. Question, Now, why would it be in these last two cases that no disorderly conduct charges were placed against these people even though the drunken charges were sort of withdrawn and abandoned and the charge reduced to careless driving and so on, when you had instructions out to Mrs. Naglee to catch these things. Answer, No, I didn't have instructions. Question, I gathered earlier that every time one of these was downgraded from drunken driving to something lesser— Answer, I think it would depend [fol. 410] on the circumstances of the person. Question, All right, now, we go to summons 5311, dated January 10, 1960, the accused being William R. Snyder, the offense happening at 2:20 a. m., the defendant being a resident of Camden, a dock hand originally charged with drunken driving and apparently the charge was changed to section 97, which is reckless driving. The matter is shown to have

been disposed of on the back-up by Judge Teitelman on January 20th, 1960, which is ten days after the date of summons and complaint on a plea of guilty and he was fined ten dollars and costs of five dollars and Judge Teitelman signed it. That, I believe, is what you said was Judge Teitelman's signature? Answer, Yes. Question, Were you present in court? Answer, I can't recall. Question, Did this man appear in court? Answer, Well, the Judge—I don't know. Question, And Mrs. Naglee has acknowledged receipt of ten and five on a charge of careless driving. Answer, Yes. Question, Was this man out on bail? Answer, Prosecutor, I can't recall. Question, I am going to ask you the question, I am going to ask you to look at this summons and look at the alteration and I ask you whether you can tell me who made that? Answer, No, not positively. I couldn't. I had only be guessing if I told you. Question, Do you remember the case? Answer, No. Question, Anybody approach you on that case? Answer, No, I can't recall. I mean I can't recall any incident. Question, if you tell me, I believe you. Answer, I think the Judge, yes. Question, Who made the change, you don't know? Answer, I don't know, no. Question, The officer? Answer, It could be the officer or it could be Mrs. Naglee. I couldn't be sure if I tell you. Question, You know nothing about the doctor's report in this case? Answer, No, I don't. Question, You don't know whether he was examined for drunken driving? [fol. 411] Answer, No. Question, There are no records that you have that would refresh your memory if we ask you to look this thing up? Answer, No. Question, And nobody ever spoke to you about this case? Answer, I can't recall, no. Question, Of course I'm not suggesting anything to you, but doesn't that change resemble Mrs. Naglee's way of changing although she has a better handwriting on the receipt, on the change it's rather crudely. Answer, Yes, but the Judge made the change. Question, That may be, but when he heard the case it was 39:4-97. It wasn't drunken driving. Answer, You see, it was altered. Question, Yes. Answer, And I'm sure the judge looking at it,

sees it was altered. Question, That may not be. Maybe he wasn't looking for trouble. Answer, I don't recall the case. Question, You don't recall anything about that case? Answer, No. Question, Do you remember him being charged with disorderly conduct? Answer, No, I don't offhand. Question, Well, he was, and he plead guilty and he was fined a substantial amount plus costs. Answer, In court? Question, Yes. Well, I don't know whether he appeared in court or not. Answer, He appeared before the judge there. Question, He appeared here on a careless driving charge, and he may have forfeited the other. I don't know, it's possible. Answer, The other complaint would be backed up. You could tell if it was Mrs. Naglee's handwriting. Question, We'll get into that. I mean it does establish a pattern as you say you admit it was a pattern that you would charge him with disorderly conduct and got the money. Answer, Yes. Question, Next is 5366, dated February 7, 1960, 2:40 a. m., Herbert W. Brining, Audubon Park, New Jersey, truck driver charged with drunken driving and in the 'other violations' area, the bracket it appears as though there is an over-write over that. It appears as though the '50' that is there is an over-write '97'. [fol. 412] He was charged on the section and not by words, 39:4-50, but that was changed to 39:4-97, and the officer being Virtue. Answer, Yes. Question, And I ask you to examine this complaint and tell me whether or not you know who made this change. Answer, Well, I don't know. It looks like the officer and yet it could be Mrs. Naglee's. Question, And you know nothing about it? Answer, I didn't say that. Question, Do you know anything about this case? Answer, He is a truck driver? Question, Yes. Answer, The only thing I know I think he was going to lose his job. I think he has five or seven children. Question, Did you see the doctor's report? Answer, I don't recall whether I did, truthfully. Was there a doctor's report? Question, Yes. Answer, No, I don't recall whether I did or not. Question, Weren't you interested in the doctor's report, did you sanction this change? Answer, When I heard of the case,

yes. Question, Was that before it was changed or after it was changed? Answer, I don't recall but I went along with it, because I think he has five children or seven, I don't know which. Question, You didn't investigate the merits of the charge against him then, whether the doctor had said he was drunk or sober or anything of that sort? Answer, Truthfully— Question, Yes. Answer, No, I investigated the merits of the family. Question, What you thought were the merits of the case? Answer, Not the merits of the case, Prosecutor, the merits of his home. Question, Well, how did you find about this charge, did Virtue talk to you about the changing? Answer, He talked to me and explained I guess the guy came back to him and told him about the circumstances. Question, And this change was cleared through the violations bureau? Answer, Yes. Question, And not through court action? Answer, Yes, that's right. Question, And he was found guilty [fol. 413] of careless driving? Answer, Yes. Question, And fined ten dollars and five dollars costs? Answer, Yes. Question, Without court action? Answer, That's right. Question, Even though the original charge had been drunken driving? Answer, Yes. Question, Was there any bail in this case at all? Answer, I don't think so. I don't think he had any money, I don't recall if he was out of work at the time it happened or not. Question, Well, he wasn't a youngster? Answer, No, he had five or seven children. Question, This one is 5537, dated May 28, 1960, it happened at 1:55, I can't tell whether it's a. m. or p. m. Linwood Finney, 46 Walnut Street, Pennsgrove, New Jersey, truck driver, charged originally with driving while under the influence of intoxicating liquors. You could see '50' under '97' and the 97 being an over-write which changes the nature of the offense as charged from drunken driving to careless driving and the back-up shows that this was settled through the violations bureau as a careless driving charge. Answer, I think he was a colored truck driver, wasn't he? Question, Let's see. I don't think you show that on these things. Answer, Yes, I think so. Question, It

does? Answer, I believe so. Question, Let's see. There is sex, male, height, occupation, nothing to denote colored. Answer, I think he was a colored truck driver, he was a truck driver? Question, Yes, Pennsgrove and settled through the violations bureau for ten dollars and five dollars costs and that sum was received by Mrs. Naglee according to a receipt issued by her as of 6-20-60, which is quite a few weeks, several weeks after May 28th when he was charged with this thing. Was he charged with disorderly conduct, do you know? Answer, Yes. Question, Did he enter a plea of guilty? Answer, Same as the others. Question, Handled the same way, he did not appear in court? [fol. 414] Answer, Yes. Question, Brought the money to Mrs. Naglee? Answer, Yes. Question, Is that what happened in each case? Answer, Yes. Question, She got the money, parceled it out into well— Question, Paid the doctor. Answer, She didn't get all the money all the time, because if it was say at night time or something it was deposited with whoever the clerk was that was on the desk. Question, He turned it over to her the next morning? Answer, Yes. Question, Eventually she is the one that got it? Answer, Yes. Question, And she made the distribution, put the five dollars one place, and the other money another place? Answer, Yes. Question, What was the doctor's report in this case? Answer, I think it was a border line. Question, This was a border line case? Answer, Yes. Question, Well, I don't want to put words in your mouth, did you know that the charge was made or was to be made? Answer, Yes. Question, He came to you and got your— Answer, He came to me and explained the guy's circumstances to me. Question, And you authorized and directed the change? Answer, Yes. Question, Next is summons 5611, dated June 2nd, 1960, either 1:45 a. m. or p. m., John Gregal, Salem Pike, Clarksboro, New Jersey, a welder and charged originally, you could see the '50' with the section dealing with drunken driving, which was changed to '97' which was super-imposed on the '50' and obliterates it to some extent. The complaint was made by Officer Virtue,

and the matter was disposed of through the violations bureau by payment of a ten dollar fine and five dollars in costs on June 21st, 1960, and a receipt was given by Mrs. Naglee for that amount on a charge of careless driving. Did you know the change was made or was about to be made? Answer, Yes. Question, Done with your permission? Answer, Was he examined by a doctor? Question, I'll ask you [fol. 415] that. Answer, I don't recall, I'm trying to think. Question, Yes, John Gregal, he was examined on the same afternoon. Who paid the doctor in this case? Answer, Same way. Question, The same way. Was there a disorderly case involved? Answer, Yes. Question, There was a disorderly conduct charge? Answer, The Borough truck stopped and he bumped into it, and they got into an argument. Question, The money was deposited and the fine in this case was how much, fifty dollar fine and five dollars? Answer, Yes. Question, Of course, ten and five on the careless driving charge and the doctor was paid out of that money? Answer, Yes. Question, In cash, did the doctor have to come in and get his money or did you take it down to him. Answer, No, he always came down to the station. Question, Then you never went to him? Answer, No. Question, You wouldn't do that? Answer, No, he came in on other cases. Question, And at that time, you took care of him? Answer, Yes. Question, No question in your mind about that? Answer, No. Question, Were you there when he was paid at any time? Answer, It was always on hearing nights. Question, And you are there, and you talk to him and he gets paid and so forth? Answer, Yes. Question, Next is summons 5759, dated November 9th, 1960, 2:30 p. m., Robert A. Franklin, Barrington, New Jersey, machinist, I think apparently charged with driving while under the influence of liquor which was changed to '97' over '50' which of course makes careless driving with a further notation of 'driving in and out of traffic over line', and this matter was disposed of according to the summons. It may not have been disposed of this way, but the summons indicates it was disposed of November 26th, but the summons indi-

cates it was disposed of November 26th upon a plea of guilty and the amount of the fine was ten dollars and five [fol. 416] dollars cost and the receipt signed by Mrs. Naglee for the fifteen dollars indicated that the charge was careless driving. Answer, He had come from the navy yard. He had his tooth extracted. I run a drunkometer on him, he wasn't examined by a doctor, I don't think. Question, Yes he was. Answer, Was he? Question, Yes he was. Answer, Franklin? Question, Franklin. He was R. A. Franklin. He was on November 9th. Answer, I don't recall the doctor coming in. Question, The doctor got paid twenty dollars for nothing? Who made the change? Are you familiar with this? Answer, Yes, I am. Question, You are familiar with this? Answer, Yes. As I started to tell you, this fellow came in from the navy yard. He had a tooth pulled, they had given him some stuff and I called the naval base to verify that he just had had the tooth pulled and the doctor had given him this shot of stuff and told him not to drive. Question, Not to drive? Answer, Yes, and he drove. Question, Was it narcotic? Answer, Some type of narcotic, yes. I spoke to the doctor over there. Question, What did the doctor's report indicate in this case, do you remember, was he examined, you don't remember that? Answer, I didn't remember him being examined by the doctor, because I run a drunkometer on him and we get less than 10 hundreds of one percent. Question, Do you have the recollection of your drunkometer test? Answer, No, they would be attached to the report. Question, They would be? Answer, Yes. Question, Why wouldn't they be? Answer, I said we don't have them. I am just trying to recall the case. Question, Did we discuss as to who made the change? Answer, The change was made right that afternoon. Question, You knew about it? Answer, Yes, I knew about it. Question, You authorized or instructed or went along with the deal? Answer, I was right there, because I am the one that called [fol. 417] the hospital. Question, it was your idea? Answer, I called the hospital. Question, You instructed the change

to be made? Answer, Yes, when we run a drunkometer on him, I am trying to think. He was eight or nine hundreds, that is what made us call the doctor over there and the doctor said I forget the narcotic drugs that he had given him, and he told him he shouldn't drive a vehicle. Question, Now, Robert Franklin, in this case, must have been in some kind of a collision? Answer, Yes. Question, Now, was he charged with disorderly conduct? Answer, That is why I didn't think he had a doctor, because he didn't want to blow the balloon up. Question, Was he charged with disorderly conduct? Answer, Yes, he gave us a lot of trouble in the station. Question, What way? Answer, Not wanting to blow the balloon and saying we were trying to frame him and being drunk and all of that stuff and call up the hospital. Question, Eventually he plead guilty to a disorderly conduct charge and fined one hundred dollars and five dollars costs. Answer, He admitted the next day he was nasty to us in his talk. Question, And also paid fifteen dollars for careless? Answer, Yes. Question, And this fellow is apparently the same pattern where people have been charged with drunken driving and they will be changed if they plead guilty to a careless driving charge and disorderly conduct. Answer, is this fellow charged the same way? Question, Well, if they are charged with drunken driving and it is dissolved into two charges, careless driving and they are charged with disorderly— Answer, Do you mean if we ask them if they wanted it that way? Question, Regardless of the condition, there was a follow up, not only a charge of careless driving but also a disorderly conduct charge. Answer, Yes, if it warrants. Question, You didn't think this [fol. 418] man was drunk. Answer, when I did the drunkometer— Question, Yet you followed the same procedure? Answer, He gave us a lot of trouble. Question, This was the disorderly conduct part, this case was a little different. Answer, he was a little belligerent at the station. Question, Now, this is 5157, dated October 4, 1959, and the defendant is Robert T. Killian, 2639 Emerald Street, Philadelphia, truck driver and apparently was charged with drunken

driving by reference to the statute section and that which was changed to 85. This was disposed of according to the memorandum on the back of this on the court action on October 14th, 1959, by a plea of guilty where he was fined five dollars and costs five dollars, signed S. Teitelman, is that the judge's signature? Answer, No. Question, Now, was he charged with disorderly conduct, he wasn't there was a hearing on 10-14-59, which is the same day which appears on court action. Answer, I don't know too much about that case, Prosecutor. I can't recall. Question, And fined fifty dollars and five dollars in costs? Answer, Yes. Question, Would you know whether there was a court appearance in this case? Answer, I believe so. Question, In other words, this is some indication— Answer, I can't give you much detail on that case, when was that? Question, October 4, 1959, this goes back. Answer, Yes. Question, This doesn't ring too much of a bell? Answer, No. Question, Well now, in this case there was put up for this defendant who was a resident of Philadelphia in the amount of two hundred fifty dollars and who is James Lee? Answer, He is a dispatcher. Question, Police Officer and of course, authorized to accept bail? Answer, Yes. Question, And the bail is furnished by A. DelRossi or a Mr. DelRossi, and for Bob Killian on driving under the influence, I suppose it is two hundred fifty dollars for his appearance. What happened to that bail money, do you know? Answer, [fol. 419] No, I don't know offhand. I can't even recall the case is as I told you that they want. Question, He was going west on Browning Road, that doesn't say too much. Now your department retains all the receipts for this two hundred fifty dollars? Answer, Yes. Question, Are there four copies or three copies? Answer, Three. Question, We still have the three. Answer, Yes. Question, When I indicated that Del Rossi never got a copy— Answer, Well, he had to get a copy. Question, But if Del Rossi came back, is there anything marked on his notes other than that? Answer, I truthfully don't remember that. I don't remember that case here. Question, Do you maintain a bail book?

Answer, Let me see it? Question, Do you recall a bail book of any kind where you record cash bail items or anything like that? Answer, I think Mrs. Naglee does. This must have been given out and came back, that is how we got the white copy back. Question, Indicating what? Answer, Indicating that this DelRossi, I guess, got the money back or something. I truthfully can't explain it right now, I mean to get this back and they are stapled together, because they were torn off and in other words— Question, That doesn't always follow? Answer, Prosecutor, this one has been folded and the rest of these you can see are plain. This one has come back off of DelRossi. Question, Or something, but it doesn't dispose completely of the question. You have no other record, no other receipts given or taken? Answer, Maybe Mrs. Naglee could enlighten you. I don't know, but that white receipt was out, it's been folded separate than the other ones. Question, I asked you whether you had authorized that change and you did say yes, or didn't you. I forget. Answer, Well, I said this one didn't ring a bell with me. Question, You have no idea who made this change? Answer, I'm sure I didn't object to it. I mean it doesn't stand out."

[fol. 420] Mr. Aiken: I think that is the end of Chief Garrity. I wonder if you would go on to Mrs. Naglee's statement given to Mr. Kaplan.

The Witness: Yes, sir.

"Helen B. Naglee, sworn, by Mr. Kaplan: Question, Now, Mrs. Naglee, you are connected with the municipal court in Bellmawr? Answer, Yes. Question, In what capacity? Answer, Court clerk and Borough violations clerk. Question, That work deals with police work involving traffic cases, matters of that sort. Answer, That's right. Question, Mrs. Naglee, to get this matter off the ground, I would like to question you about certain summonses and I want to inform you I am the Assistant Prosecutor and that this office is working under a Supreme Court order dated last June, directing originally the Attorney General of New Jersey to investigate the municipal court of Bellmawr with

reference to irregularities in the handling of motor vehicle matters. And, the Supreme Court has further instructed the Attorney General to submit the case to the Prosecutor of Camden County for further investigation. I want to ask you some questions, but before I do, I want to advise you anything you say must be voluntary and of your own free will and accord, without any threats, promises or coercion, and anything you say may be used against you or against any other person in any subsequent actions, and you have the privilege of refusing to make any disclosures which you feel may incriminate you. Do you understand that? Answer, Yes sir. Question, Are you willing to proceed? Answer, Yes. Question, How long have you been a violations clerk in Bellmawr? Answer, I think I went in in 1947, I think it was 1947. Question, You have been a court clerk for some length of time? Answer, Yes sir. [fol. 421] Question, What are the duties of the violations clerk? Answer, That is for people who have violations that are not serious, doesn't have to come before the judge. They would sign a waiver. Question, They are matters where you might dispose of them on payment of the proper amount? Answer, Minor violations. Question, What is the duty of the court clerk? Answer, As court clerk, I prepare the cases for the judge, like disorderly cases and sit with him in court on court nights. Question, And you keep a docket of the cases? Answer, Yes. Question, And handle the monies? Answer, Yes. Question, You act in both capacities? Answer, Yes. Question, And issue receipts where it is necessary? Answer, Yes. Question, And you make returns where the matters are disposed of and there is excess money involved. Answer, What do you mean? Question, If there are any monies that are surplus, after a matter is disposed of, for instance if the fine is less than the bail? Answer, Yes, I return the money. Question, To the person entitled to receive it? Answer, Yes. Question, Mrs. Naglee, you are probably aware of the fact that this investigation stems from reports and later evidence of the fact that motor vehicle summonses have been altered and changed in some

cases. Answer, Yes. Question, Do you want to say generally that was a fact, there have been cases where tickets have been changed or fixed, whatever you want to call it? Answer, I would rather say altered. Question, In certain instances? Answer, Yes. Question, And that has been a practice for some time in Bellmawr? Answer, It wasn't —I don't know how to put it. It wasn't the practice, it was a case where someone had gone to the chief or something, it wasn't all cases. Question, Not all the cases? Answer, If someone had a hardship case, he went to the arresting officer and they in turn went to the chief and he would try [fol. 422] to give the person a break. Question, If the chief or the arresting officer or possibly you were contacted with a request to change, alter it, and you felt like doing it, it could be done if the chief would direct you to do it, but the chief always had the consent of the arresting officer? Answer, Yes, I never did one of my own. Question, There was an arrangement? Answer, The arresting officer usually went to the chief. Question, But it was known to the chief. Answer, It was really mostly in serious requests or where the point system was going to take the man's license. Question, Next is number 5291, November 29, 1959, Phyllis M. Zippel, and in the 'other violations' block there now appears 'RS 39:4-97' where the '97' appears, there has been an erasure. I have no way of telling what was under there, we do know and have a record that Phyllis Zippel was examined on November 29th for drunken driving. We have that information, and you won't know what that report shows, of course. Answer, No. Question, This was disposed of through a violations bureau? Answer, That's correct. Question, And I'm going to ask you this question. Answer, I had nothing to do with this. It's signed E. G. The chief collected the fine. Question, How do you know? Answer, E. G., I had nothing to do with it. I went in the next morning and he said Helen— Question, He took care of all the money? Answer, That's correct. Question, In this case, there was no disorderly conduct charge, just the fifteen dollars? Answer, No. Question, Next is 5311,

William R. Snyder, dated January 10, 1960, again he was charged with careless driving. Our records indicate he was charged with drunken driving, and in the summons the '50' appears very clearly under the '97' written over it. The original charge was drunken driving, changed to careless driving. I show you this and ask you if you can tell me who [fol. 423] made the change. Answer, That is the judge's writing. The judge heard it, but I changed it. That is my '97'. Question, And he heard it? Answer, He heard it as a careless driving. Question, As careless driving charge? Answer, Yes, was he examined? Question, Our records indicate a plea of guilty and a fine of one hundred five dollars costs for disorderly conduct, William R. Snyder on 1-20-60. Answer, He was arrested on the 10th, one hundred five dollars. Question, And this one hundred five here— Answer, And one hundred five dollars on the disorderly and I wouldn't doubt but it looks as if the defendant appeared. Question, You think the defendant appeared? Answer, I couldn't tell you, you could see the hearing date in your traffic docket. Question, What would that indicate? Answer, Well, whether there was a hearing or whether it was taken care of in violations bureau. We have it marked hearing, I couldn't swear to it. It is marked hearing. Question, Then it would appear that this matter was disposed of at a hearing? Answer, That is the way it looks in the docket. I can't recollect. Question, Do you have many disorderly conduct cases in your court, during the course of the year? Answer, Do we have many? Question, Yes, do you have many. Answer, Well, they run in cycles. Most of the disorderlies— Question, But you do have them, they are not unknown to your court. Answer, no. Question, And when these disorderly conduct cases come up from time to time, where they have no reference at all to a motor vehicle case, such as we have been discussing, what does the judge usually fine them? Answer, it depends how serious it is, most of our cases are at Dick Lee's and 'unable to give a good account', something like that. They

range from twenty-five to one hundred dollars. At Dick Lee's we have habitual people come back there and they [fol. 424] drink. It's usually one hundred dollars or so, because he's trying to break it up. Question, In other words these disorderly conduct fines in these cases are not out of line? Answer, No. Question, Are they lower? Answer, Fifty dollars, one hundred dollars, some of these are legitimate. Question, They average out the same as the other cases? Answer, Yes. Question, Where automobile violations are not involved? Answer, That is a set fine. Question, You said you made the alterations here by the judge, and you don't know whether. Answer, No. Question, Next is summons 5366, Herbert W. Brining, charged with drunken driving. You could see the '50' over which has been superimposed '97' which is careless driving. And disposed of in the violations bureau on a careless driving charge, fine of ten and five, I ask you to look at the face of the complaint and let me know whether or not you know who made that alteration. Answer, I did. Question, That was changed from drunken driving to careless driving? Answer, I did. Question, Next is 5537, dated May 28, 1960, Linwood Finney again '97' seems to have been written over '50' when the drunken driving statute is inserted and added was 'driving too fast for conditions' and this was disposed of in the violations bureau as ten and five on a charge of careless driving. Our records indicate that Finney was examined for drunken driving and I ask you to look at this complaint and any other parts that you wish and let me know if you can who made that alteration? Answer, I did. Question, You made the alteration? Answer, Yes. Question, And you received the monies? Answer, I did. Question, And so on? Answer, Yes. Question, I call to your attention the fact that the defendant forfeited fifty-five dollars bail for disorderly conduct. The record indicates that there was fifty-five dollars deposited, which was forfeited by this fellow, [fol. 425] Finney. Answer, Yes. Question, Would you know what that fifty-five dollars was put up for? Answer, Well, I guess that's all that the chief accepted from him, I

don't know. Question, You forfeited it? Answer, Unless he told them if you go to court there will be a fifty-five dollar, and fifteen dollar and whatever that was, and he didn't show up. It went in as a forfeit. Question,—

Mr. Corbin: You want to change your docket there on 6-22-60.

Question, How was the fifty-five dollars applied? Answer, Failed to appear and he had a receipt on it, and forfeited fifty-five dollars. That would be in there. Question, What happened to the fifty-five dollars? Answer, It went to the Borough. When it is forfeited, it goes to the Borough. Question, And this was bail for appearance on the drunken driving charge? Answer, He was told his fine would probably be fifty-five dollars and accepted it as bail and then he just forfeited and all disorderlies go to the Borough. Question, But the bail was for appearance for the drunken driving charge? Answer, No, the bail was for appearance in the disorderly. Question, Do you know how much with this case? Answer, No, I don't. Question, No sense of me trying to draw at lot of conclusions and pictures,— Answer, What was on that? That was changed to careless? Question, Yes, careless driving. Answer, Whoever took the bail must have took for that and the doctor, if he was examined by the doctor, and broke it down for me. Question, Next is 5611, dated June 2nd, 1960, John Gregal and again '97' is written over '50' which is the drunken driving statute and the comment 'too fast for conditions' and disposed of through the violations bureau and you indicated a fine of ten and five for careless driving, and fifty and five for disorderly conduct, do you remember anything? An-
[fol. 426] swer, It just follows right here in the book. Question, Do you remember anything particularly about it? Answer, No, I do not. Question, 5759, dated November 9, 1960, Robert A. Franklin, and again apparently a change from '50' to '97' and the addition of 'driving in and out of traffic over line', a court action, plea of guilty, ten and five, signed S. Teitelman, and your receipt indicates receiving ten and five and I ask you whether or not that is the signa-

ture of Judge Teitelman. Answer, No it is not. Question, You wrote that? Answer, Yes. Question, On the front of the complaint, there is some changes. Would you know who made those, Mrs. Naglee? Answer, I did. Question, You made them? Answer, Yes. Question, And this again was one of those cases? Answer, That's right. Question, Number 5157, dated October 4, 1959, Robert T. Killian, again it is apparent that '50' has been here and written over '85' in black ink. Incidentally and disposed of by court action, signed S. Teitelman, and I ask you whether that is his signature or whether you signed it. Answer, I signed it. Question, He knew nothing about this, in other words, he didn't know anything about it? Answer, No, he didn't know anything about it. Question, Do you know who made the change? Answer, I made the change. Question, From drunken driving to careless driving? Answer, No, passing on the shoulder. Question, In this case, there was two hundred fifty dollars bail put up by a A. DelRossi, conditioned on the appearance of the defendant in court, on the 21st of October and this matter was disposed of on October 14th which is a week before the appearance date. Do you have a record of having received the two hundred fifty dollars or any record of that bail transaction? Answer, No, I don't. It was paid to James Lee, he was one of our dispatchers, I don't know, I didn't—I must have received it the same as I [fol. 427] the others. Question, What did you do with the cash bail when you received it? Answer, Cash bail? Question, Yes, you deposited it? Answer, I applied it. Question, Well, I mean you have no recollection of this and there is no record in your books of whether DelRossi got his money or not. Answer, He evidently did, or you wouldn't have the white slip. See, when they get it back themselves, like someone puts it up, they turn in that white slip and they get their money back. Question, Don't you ever get receipts or insist on receipts when you pay money back from the individual instead of accepting this back, you could say 'received from the Borough of Bellmawr.' Answer, He had his proof that we had it, the proof he paid the two hundred fifty dollars. Question, You de-

pend on the fact you gave him a licking in court in case he claims he didn't get it back. Answer, We don't know. Question, Doesn't the administrative office regulate this procedure for money returned? Answer, Where I return bail, I return it in check. I have a municipal court account and you don't get that cash anymore. You get it back by check. Question, Killian, you did make the change? Answer, Yes I did.

The Witness: That concludes Mrs. Naglee's statement.

Mr. Aiken: I wonder if Your Honor wants to give us a recess.

The Court: I think perhaps the jury will need a very short recess. Again you don't have to crawl up and down those stairs, if you prefer you can remain out here in the corridor.

[fol. 428] (A short recess is taken.)

Mr. Aiken: Mr. Garifo, I think we're on the last one and that is Edward Virtue. Will you relate to the judge and the jury the portion that has been marked in his statement to Mr. Kaplan, dated December 7, 1962.

The Witness: Yes.

"Edward Virtue, sworn, by Mr. Kaplan: Question, Now before we begin, I want to advise you anything you say must be voluntary, of your own free will and accord, without any threats, promises or coercion, and anything you say may be used against you or against any person in any subsequent proceeding in the courts of our state. You do have the privilege under our laws to refuse to make any disclosures which you feel may tend to incriminate you. Do you understand that? Answer, Yes. Question, You further understand this investigation was first undertaken by the Attorney General by Budd Rigg and by direction of the Supreme Court it has been handed down to us to possibly fill in some gaps and that is why we are here. Answer, That is correct. Question, Number 5291, November 29, 1959, 3 a. m., Phyllis M. Zippel, housewife, the word 'operator' which is printed as part of the ticket is circled, charge

originally was 39:4-50, your drunken driving statute, and that has been erased and changed to, and when I say 'that you know', I mean '50' has been erased and inserted is 97, which is the careless driving violation and the matter was disposed of in the violations bureau, on a careless driving charge, and a conviction and a fine of ten dollars and costs of five dollars, and I ask you whether or not you made that erasure and that new insertion. Answer, That is not my handwriting, that is not my handwriting. Question, Are [fol. 429] you familiar with the case? Answer, Vaguely, yes sir. Question, Do you know whether Mrs. Zippel was examined for drunken driving. I tell you she was, do you remember the nature of the report made? Answer, I believe she was found to be under the influence. Question, Found what? Answer, Found to be under the influence if she was examined. Question, The doctor pronounced her unfit to drive, in other words. Answer, Yes. Question, And were you asked if you would consent to this change, do you remember? Answer, I believe it was a hardship case. Question, I would like to get this clear, do you recall being asked to make the change and give your consent? Answer, I had to be consulted, yes. Question, Do you remember who asked you? Answer, No sir, I do not. Question, Now, the receipt shows a conviction on a careless driving charge and you gave your consent because it was a hardship case? Answer, Yes, I believe it was. Question, And this is in line with the policy or practice that developed with tickets other than drunken driving. You did whatever you could to bring them into reasonable bounds according to your judgment? Answer, Yes, may I see that summons sir? Question, Was this change made the same night she was arrested? Answer, I couldn't answer that. Question, Do you remember any details about this case? Answer, No. Question, Now, number 5157, October 4, 1959, 7:25 p. m., Robert T. Killian, a Philadelphia truck driver charged with drunken driving under section 50, originally and that was overwritten with '85' passing car on shoulder, disposed of by a court action on 10-14-59 although originally returnable

according to the complaint on October 21st, 1959, a week earlier through court action, and there is a signature S. Teitelman. Disposition by a plea of guilty, a fine of five dollars, costs of five dollars, and I ask you whether or not [fol. 430] the alteration or change which is shown on the front of that complaint is in your handwriting. Answer, No sir. Question, Is that Judge Teitelman's handwriting, do you know? Answer, No sir. Question, It's not his writing? Answer, No. Question, Now, do you recall a disorderly conduct charge against Robert Killian as of the same date on which you are the complainant and he plead guilty on the 14th which is the same day he plead guilty to passing car on shoulder, and he was fined fifty dollars and costs of five dollars. Do you remember that? Answer, No sir, was this in 1959? Question, 1959. Answer, No. Question, Are you familiar with the fact that bail, cash bail, was put up for Killian on the same night that he was arrested by one Del Rossi for his appearance on October 21st, do you recall the bail being put up? Answer, No sir. Once we make an arrest and make the charge, we leave them in the station and if they don't make bail we commit them to the county jail. Question, You don't know anything about the bail being placed? Answer, No sir. Question, Who was DelRossi, do you know? Answer, DelRossi? Question, When you arrest one of these drunken drivers, do you stay with them until he is disposed of by bail? Answer, We have him examined, make our charges, and we will leave him in charge with the man on the desk and we go about our business. Question, You don't stay with him? Answer, No sir, sometimes we do and sometimes we do not. Question, Do you remember being with him when the bail was furnished that night? Answer, No sir. Question, Do you recall examining the doctor's report in this case as to drunkenness? Answer, No sir. Question, But you did consent to that change. Answer, Yes sir. Question, To whom, do you remember? Answer, No sir. Question, Now, this disorderly conduct charge, do you recall why you placed a disorderly con- [fol.431] duct charge against him? Answer, No sir. Ques-

tion, Did you testify against him at a hearing for disorderly conduct? Answer, If there was a court action on it, yes sir. Question, Do you recall testifying against him, he was a truck driver. Answer, Evidently, that is why I consented to the change. That would've meant his livelihood. Question, In other words you consented to a downgrade so to speak of the drunken driving complaint to disorderly conduct and careless driving? Answer, Yes, it's possible the man was disorderly with me. Question, But you don't remember? Answer, No, I do not. Question, Was it the usual occurrence or not uncommon if you felt it was a hardship case, you would dispose of it by consenting to a downgrade so the charges became not drunken driving, but careless driving and disorderly conduct? Answer, Where a person was disorderly with me, yes. Question, But not where he wasn't disorderly? Answer, No sir. Question, You're sure of that? Answer, I would say no sir. Question, Do you remember signing the complaint in this case? Answer, I signed my complaints, I will say that. Question, Do you think someone might have signed your name to these complaints? Answer, I don't think so. Question, And you insist that anytime you downgraded a drunken driving case, there was a legitimate reason for calling the person disorderly even though he was a quiet drunk and just driving in zig zag fashion. Answer, I have very seldom saw a man locked up for drunken driving that was very quiet, especially when he brought in for examination. Question, Let's say someone's conduct did not reach the point of being disorderly. Answer, I can't say I can remember the case, no sir. Question, 5759, November 9, 1960, 2:30 p. m., Robert A. Franklin, charged originally with drunken driving, and changed to careless driving with [fol. 432] almost the entire part of the original charge obliterated and written over the careless driving section of the statute 'driving in and out of traffic over line'. You made the complaint, disposed of by was termed 'court action' November 16, 1960, although the matter wasn't actually returnable until November 30, 1960, by a plea of guilty

and a ten dollar fine and five dollar costs, signed 'S. Teitelman' although there is some question as to whether or not the judge did sign this. And, it shows a conviction for careless driving and a receipt of ten and five, by Mrs. Naglee, and I ask you whether or not you made that alteration or change on that ticket. Answer, I know the case, but I didn't change it. Question, Tell us what you know about it. Answer, Mr. Franklin was involved in an accident, I brought Mr. Franklin into headquarters and charged him with drunken driving. Question, Was he drunk? Answer, He appeared to be drunk, yes. Question, What did the report show when it came in? Answer, I believe the report also said he appeared to be under the influence of intoxicating liquor. Wait a minute— Question, Does this explanation have to do with the fact he wasn't drunk? Answer, He was a drunkometer case, if my recollection serves me. They have the report there. Question, I didn't ask you that. Answer, I'm trying to answer the best I can, but I had so many cases. Question, I'm not pushing you. You thought he was drunk? Answer, I believe Mr. Franklin was brought in and I believed him to under the influence. Question, Had you made a complaint? Answer, I made a complaint and put him on the drunkometer. Question, Yes? Answer, I believe he had a reading of eight hundreds or nine hundreds of one per cent of blood alcohol. Mr. Franklin was a retired naval officer, and when I told him he was under the influence, he became abusive and said [fol. 433] he wasn't drunk. We checked out the navy yard, he stated he just come down from the navy yard and he just had a tooth pulled and had stopped and had a couple. Question, A couple of drinks? Answer, Yes, and I called the navy yard and talked to the surgeons who worked on him and he stated he had a tooth pulled at the time and he had a lot of stitching and he gave him some kind of pills or some kind of medicine and he told him not to touch any alcohol. Question, Did he take the pills? Answer, Yes, I believe he took some right there. Question, Do you know that? Answer, Yes, he gave him some right there before he left to

kill the pain. Question, Who did? Answer, The doctor. Question, Doctor Cooperman? Answer, No, I examined him. I am a drunkometer operator. Question, Did the doctor give him those pills in your presence? Answer, No, I called the doctor and the following day he stated he had given him pills, yes sir. Question, So you changed the charge? Answer, Yes. Question, No other consideration was involved except he had taken pills and that might have changed his condition? Answer, Yes, the alcohol didn't show enough to bring him under. Question, What happened to him? Answer, A friend took him home. Question, What happened to his car? Answer, Left at the police station, no, it was towed in because it was involved in an accident. Question, Did you sign a disorderly conduct charge against this man? Answer, Yes. Question, At whose request? Answer, Mine. Question, Just yours? Answer, Yes. Question, As I understand it, the same night? Answer, Yes sir. Question, And didn't he have a hearing on the matter of disorderly conduct? Answer, No sir, I believe he forfeited his bail. Question, How much bail did he put up? Answer, I don't know, I don't know sir. Question, Did you testify, were you in court when he was tried on the [fol. 434] careless driving charge? Answer, I don't know whether he came to court or paid it sir. I remember he paid for the damages to the car that he struck. Question, Were you in court when he plead guilty, if he did, to the disorderly conduct charge? Answer, I don't know whether he plead guilty in court or plead guilty and paid the fine, sir. Question, Didn't you tell me you were at every court session? Answer, Yes. Question, How many court sessions are there a week? Answer, One a week. Question, No more than that? Answer, No sir, unless there is something special. Question, When you schedule a court appearance it is for that one night that the judge will sit, if you book him for a court appearance at a certain time? Answer, Court night is Wednesday night. Question, And you book him for a court night, you don't have them there on a night when there is no court. Answer, No sir. Ques-

tion, And you schedule him for November 30, and the thing was disposed of on November 26th. How do you account for that? Answer, The only way I can account for it, he paid it through the violations bureau rather than come to court. Question, How do you account for the fact that he was found guilty of disorderly conduct on the 26th which wasn't a court night. Suppose I tell you it is pretty well established it was a practice in Bellmawr in these drunken driving cases where because they were sorry for people and all that sort of thing, and depending on the financial ability of the individual he was fined varying amounts on the disorderly conduct charges and fifteen dollars on the careless driving charges. Are you familiar with that practice or aren't you, or are you familiar with the fact that practice existed at one time during the time we are talking about? Answer, Would you mind rephrasing that? Question, In going through these complaints, and in going through the [fol. 435] dockets of Bellmawr Municipal Court, there appears to be a pattern that in drunken driving charges have been changed to a lesser offense on occasion, and where the change is made almost invariably the change is from drunken driving to careless driving under 97, and a disorderly conduct charge and the careless driving charge is disposed of for fifteen dollars while the disorderly conduct charge is disposed of by a guilty plea where the amount depends on the financial circumstances of the accused, and that seems to be the pattern followed in the Borough. It may not have applied to everybody, but may only have applied to hardship cases, but isn't it a fact that practice existed and you knew about it? Answer, Yes sir. Question, We don't have to quibble about it, it happened and it was part of something down there. Answer, Yes sir. Question, In Franklin's case, it was done by somebody and you may have had a part in it but you think in your own mind you can justify it. Answer, Yes sir. Question, Number 5611, John Gregal, charged originally with drunken driving, changed to careless driving by writing over '50' and putting in '97' and disposed of in the violations bureau for ten and five which was received by Mrs. Naglee on a care-

less driving charge and I ask you whether or not you made that alteration? Answer, That is my writing. Question, Do you recall whether there was a disorderly conduct charge in this case of Gregal's? Answer, No sir, I do not. Question, There is a record of Gregal having been charged with disorderly conduct that was disposed of on a guilty plea with a fine of fifty dollars and costs of five dollars. Do you recall that at all whether you testified or not, now that was disposed of on a court night although the other offenses are run through the violations bureau. Answer, No sir. Question, Number 5537, May 28, 1960, Linwood Finney, [fol. 436] truck driver, Pennsgrove, charged with drunken driving under Section 50 and written over the '50' is '97' and in the careless driving box, there is a tick to indicate the charge of careless driving you made the complaint and Badini and Bagroski accompanied you. The charge was changed to careless driving, and disposed of by court action on 6-20-60. It wasn't a court appearance. Court appearance is down as June 15th, 1960, and it shows that went through the violations bureau and that money was received ten and five, careless driving. Answer, No sir, that's not my writing. Question, Now, in the Finney case, you charged Finney with disorderly conduct and he forfeited fifty dollars bail for non-appearance. Do you recall the circumstances? Answer, If you are asking me about one disorderly conduct charge, I think if you will check you will find out I have had a lot of disorderly arrests. I can remember a time at Dick Lee's when we locked up ten or fifteen a night. You are asking me about one disorderly charge. Where is the needle in the haystack. I don't remember. Question, Number 5366, February 7, 1960, 2:40 a. m., Herbert W. Brining, truck driver, originally charged with drunken driving on the complaint and over the '50' is written '97' which is a careless driving disposed of in the violations bureau for ten and five for careless driving and I ask you if you made the change. Answer, No sir. Question, But you remember the case? Answer, Yes, I remember the case. Question, Number 5311, January 10, 1960, William R. Snyder, Cam-

den, a deck hand originally charged under section 50, drunken driving, changed to '97' careless driving charge disposed of according to the record on the back of this complaint on January 20, 1960, plea of guilty, fined ten and five, and signed 'Saul Teitelman' and the receipt shows receipt of ten and five by Mrs. Naglee on careless driving charge [fol. 437] and I ask you whether or not you made that change. Answer, No sir. Question, Now, do you recognize that as being Judge Teitelman's signature, if you know it? Answer, I would say that is the judge's signature. Question, That is not your change? Answer, No sir. Question, Are you aware of the fact you charged Snyder with disorderly conduct and that matter was disposed of on January 10, on a plea of guilty, and a fine of one hundred dollars and five dollars costs? Answer, He was also charged with disorderly. Question, Snyder? Answer, It must have went into court. Question, He did? Answer, Yes sir. Question, And actually tried and defended? Answer, To the best of my recollection. Question, He plead guilty? Answer, To the best of my recollection I would rather say I don't remember on that one."

The Witness: That concludes the statement of Mr. Virtue.

Mr. Aiken: Thank you, Mr. Garifo.

The Court: Now, for the purpose again of the record, I think all of these statements that have been read should receive a marking for identification, not evidence. Identification. Supposing we take the last marking. S-27 through 30 for identification.

(The aforementioned articles received and marked in Exhibits S-27 through S-30 for identification.)

The Court: Is there anything further for Mr. Garifo?

Mr. Aiken: No.

[fol. 438] The Court: All right, Mr. Garifo, you stand excused. Thank you for your services.

(Witness excused.)

JOHN F. CORBIN, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Mr. Corbin, where do you live?

A. I live in Medford Lakes, New Jersey.

Q. And what is your occupational profession?

A. I am a detective in the New Jersey State Police.

Q. And how long have you been connected with the New Jersey State Police?

A. Fifteen years.

Q. And how long have you been a detective?

A. Six years.

Q. Now, have you had some connection with the matter here in court now?

A. Yes sir, I have.

Q. When did you first become connected with that matter in any way, do you recall?

A. Yes, I was working with Deputy Attorney General Budd Rigg on another matter at the time, June of 1961, and he was assigned to this investigation by the Attorney General and he needed assistance, and I assisted him in this investigation, starting from that point on.

[fol. 439] Q. Now, in connection with your assistance to Mr. Rigg, did you have occasion to go down to the Borough of Bellmawr, specifically the police headquarters there?

A. Yes sir.

Q. And very generally, what did you have to do down there, what did you do down there?

A. Well, I recall I had accompanied Mr. Rigg down there about the middle of July, after he was given his assignment, 1961, and we had an interview with Chief Garrity in his office and Mr. Rigg informed him of the investigation, the Supreme Court order that he was operating under, and if

he was going to conduct an investigation and he asked Mr. Garrity a few questions.

Q. Now, can you recall what the questions were that Mr. Rigg asked Chief Garrity?

Mr. Malandra: I object to any conversations between this witness and Chief Garrity not in the presence of the other two defendants.

The Court: What are we getting into now? I mean what is the purpose of this question?

Mr. Aiken: Well, Your Honor, the witness I believe will testify to certain conversations between himself or between Mr. Rigg and Chief Garrity in his presence.

The Court: Are they already in the statements that have been read?

Mr. Aiken: Well, there may be similarities but there will also be different statements, Your Honor.

[fol. 440] The Court: Were these taken down stenographically?

The Witness: No, Your Honor, they were just in the form of conversations between the defendants.

The Court: All right, then I'll permit it but I will first instruct the jury. The law is very clear on the business of statements given by joint defendants in a conspiracy case. Perhaps the easiest way to explain it to you is to take this individual case and apply the principles of law to it. In this case, of course, three people were indicted, are charged with the crime of conspiracy. Obviously, the Attorney General's office was sent in to investigate it long after the conspiracy had been completed. And, that, of course, is the crux of the whole of this legal explanation.

Mr. Malandra: May I interrupt Your Honor in saying if there was a conspiracy—

The Court: You may be seated, Mr. Malandra, and don't interrupt the court and if you desire afterward to correct that otherwise all we're going to do is confuse. You save your objections to the court's remarks until it's done. I am saying that this is the law on conspiracy whether it applies to this or a thousand other cases but if you're

going to argue with me while I'm instructing the jury, all you're going to do is confuse the jury and you may make your notes as soon as I am done, object to the instructions given to it and if they're wrong, I'll correct them. Please, that's the orderly way to do it. You know it better than I do, so conform to it.

This of course, is especially important as far as the rights of both the state are concerned and these defendants are [fol. 441] concerned. There is an illustration, I will qualify it as far as that. I said an alleged conspiracy. See, the state contends that there was a conspiracy here, the defendants vigorously contend there was no conspiracy here. You see what I mean. Basically, of course, that is the whole of the case, if they could both agree there wouldn't be any case. The state says there was a conspiracy the defendants say there was not a conspiracy. What I am giving you is the law of conspiracy whether it applies to this case or a thousand other cases makes no difference. This is the law of New Jersey. Now, getting back again to this particular case, and I am doing that assuming we'll say merely for the sake of argument, that the state's contention is correct, the investigation in this case and the questioning of these witnesses and these conversations between the defendants and any other investigating acts of the state took place long after the conspiracy was over. Therefore, as part of any statements or any conversations given by the individual defense is concerned, it only applies to the particular person giving it. And, you are only to consider it from that standpoint. Now, there may be, shall we say, conversation here with Mr. Garrity, something said concerning one or other of the defendants with a tendency to implicate. Obviously, that is not binding upon either of the other defendants and you are to entirely disregard it. I will repeat. Any statements made at the time that the state was investigating this case by one of these defendants only binds him and does not bind the other two defendants or either of them. That is the law of the state of New Jersey, that is binding upon you in your consideration of the case as jurors and is binding

on me sitting here as the court. Now, I will hear you, Mr. Malandra.

[fol. 442] Mr. Malandra: Your Honor has adequately explained the point that I wanted to make, that the conspiracy you said went that the conspiracy was over.

The Court: Well, are you satisfied, with or without making any further speeches?

Mr. Malandra: Yes, sir.

The Court: Do you have anything to say, Prosecutor?

Mr. Aiken: No sir.

The Court: All right, with that explanation given to the jury and with the admonition to you to consider it as the law of New Jersey, you may proceed with the interrogation.

By Mr. Aiken:

Q. I think I was at the point, Mr. Corbin, where I had asked you what questions and answers were asked by Mr. Rigg of Mr. Garrity, at the time you first went down to police headquarters in Bellmawr in July of 1961?

A. Well, as I repeated before, or as I said before, that Mr. Rigg informed Chief Garrity the purpose of the investigation and what we are there for.

The Court: When and where did this take place?

The Witness: In police headquarters in Chief Garrity's office.

[fol. 443] The Court: Approximately what time?

The Witness: All I can tell you is the middle of July, 1961.

The Court: It was on your first trip down there?

The Witness: On our first trip down there, and at this time, Chief Garrity knew of this, the summons had been taken from the files there and he was aware of that and at this time he told us that that was all his fault, and he just wanted to take the entire responsibility for the entire thing.

By Mr. Aiken:

Q. And was that the extent of the conversation at that time?

A. That was just about it, yes.

Q. And what happened after that, do you have any subsequent conversations with any one of the defendants?

A. Yes, in September, early part of September of the same year, a couple of months later I was in the presence with Mr. Rigg and we had an interview with Chief Garrity at his home in Bellmawr, New Jersey.

Q. And what happened there, or what was said there?

A. Well, Mr. Rigg specifically went there, based on some information we had gathered just prior to this and had specifically requested Chief Garrity regarding drunken driving tickets and he asked Chief Garrity if there was any drunken driving tickets involved in these alterations and at which time the chief stated definitely not, he never touched a drunken driving ticket.

Q. Now, any other conversations with any of the defen- [fol. 444] dants after one that you mentioned in September with Chief Garrity at his home?

A. Yes sir, again December of that same year, 1961, in the presence of Mr. Rigg, we had another interview with Chief Garrity at his office in the municipal building, Bellmawr, New Jersey, at which time he was informed of the drunken driving summonses that had been altered, and in fact they were handed to him and shown to him and asked for an explanation regarding each and every one of them, and at this time we also had asked him for the records concerning the examinations, and Chief Garrity made an explanation for that at that time, that since the summonses had been altered from driving under the influence to a lesser charge, a charge of careless driving, that the medical records no longer applied, and they were taken from the files.

Q. And by the medical records, you are referring to the doctor's examination?

A. Doctor's examination, that was the explanation of why they weren't there.

Q. Now, do you recall any subsequent conversations with Mr. Garrity or either of the other defendants?

A. No.

Q. When did your direct contact with the Borough of Bellmawr end?

A. In January of 1962.

Mr. Aiken: That's all.

[fol. 445] Cross examination.

By Mr. Malandra:

Q. Now, Detective Corbin, am I to understand that you had three meetings with Chief Garrity in the presence of Budd Rigg?

A. Yes sir, that I can recall specifically.

Q. When was that, at his office in Bellmawr?

A. Yes.

Q. And two was at his home?

A. One was at his home.

Q. Where was the third one?

A. At the Bellmawr Police Station.

Q. There were two at the Bellmawr Police Station and one at his home?

A. Yes.

Q. And these three conversations, how much time was taken. Let's take your first meeting, when you went down in July of 1961, how long did you meet with Chief Garrity in his office?

A. I would approximate the time between a half an hour and an hour.

Q. You were there a half an hour to an hour?

A. Yes.

Q. The second meeting at his home, how long were you there?

A. About half hour.

Q. Are you sure now, detective, or are you guessing at this?

A. I'm just estimating it.

Q. Approximately a half hour the second time?

A. Approximately.

[fol. 446] Q. And how about the third time?

A. I would approximate again an hour.

Q. Approximate about an hour?

A. Yes sir.

Q. Now, are you telling me that in these conversations that take approximately two hours or more that all that was said by the chief was that this is all my fault, and that he was shown some tickets of drunken driving which he says he didn't touch, is that all that took place in two hours?

A. The substance of what took place, yes sir.

Q. Did it take you and Mr. Rigg two hours to ask that question?

A. No, of course not.

Q. Now, there must have been many other things said, isn't that right, Detective Corbin?

A. Yes, there were other things said.

Q. Let's go into some of those things. Now, what did he say? What did you ask him, what did he say?

A. Substantially, just what I have testified to.

Q. But you don't want me to believe it took him two hours to make one sentence, do you?

A. No, I don't expect you to believe that.

Q. All right, now what was said?

A. It was said over and over again, other tickets were gone over individually.

Q. He said over and over again for two hours it's my fault, that is what you want me to believe?

A. No, I don't want you to believe that.

Q. Well, let's get down to it, you were there, weren't you?

A. Yes, I was.

Q. And Budd Rigg was there, wasn't he?

A. Yes, he was.

[fol. 447] Q. Now, you tell me what did you ask him and what did he say?

A. Substantially, what I testified to before.

Q. Well now, detective, you have been going over this matter with the Prosecutor constantly for the last week or so, haven't you?

A. No.

Q. You have not been going over this matter with the Prosecutor?

A. I haven't been going over it with him constantly.

Q. Well, have you gone over it with him every day since we've been here?

A. We've talked about it, yes.

Q. You were talking about this case, weren't you?

A. Yes.

Q. And the part that you took in it, isn't that so?

A. No, not all the time, no.

Q. Well, you couldn't talk about a part that you didn't take in it, could you?

A. I couldn't no, he could.

Q. Well, that's what I'm asking you. I'm asking you detective, have you been talking to the Prosecutor about this case for the last eight or nine days?

A. Yes sir, I have.

Q. All right now, you were there on that day, now you tell us what happened?

A. On what day are you referring to?

Q. The first day you went.

A. I will repeat it again. Mr. Rigg and I accompanied Mr. Rigg, we went to Mr. Garrity in his office in Bellmawr, we informed him on the investigation and at that time he said that the whole thing was his fault and he wanted to accept the full responsibility for it.

[fol. 448] Q. And that took an hour? It seems to me like it just took you thirty seconds.

A. I have known Chief Garrity for a number of years, and we have a lot of conversations about other things too, that has no relation to this case.

Q. Now, do I understand that you were talking about other things, that had no relationship to this case there?

A. Yes sir, we were.

Q. Well, can you tell me some of those things?

A. About different cases, I worked in Mantua one time and I came into the office a number of occasions, talked about police work in general, we were both policemen.

Q. And what was Budd Rigg doing while you were having this social gathering?

A. Joining in the conversation.

Q. I beg your pardon.

A. He was part of it too.

Q. He didn't remember any of your cases you had in Mantua, does he?

A. He is a Deputy General law enforcement and it was generally his field at the time too.

Q. Was he familiar with your cases too?

A. Not particularly, no.

Q. Well then, he had no part in the conversation?

A. He was there.

Q. But he had no part in the conversation?

A. I don't remember what he said.

Q. Well, you remember what Garrity said.

A. Yes, I do.

Q. Well, why don't you remember what the man said that you went down with?

A. I don't remember every remark he said, no.

[fol. 449] Q. Well, you must have talked about this case before you went to Garrity's house, didn't you?

A. Sure.

Q. And you prepared what you were going to ask him, didn't you?

A. Yes.

Q. And you can't remember what it was?

A. I do remember what we asked him.

Q. Well, I just asked you if you remembered what Budd Rigg said and you said you couldn't remember.

A. He was talking about the visit at the office. Now, you referred to Mr. Garrity's house, two different places.

Q. Do you remember anything Budd said at any one of the three meetings for two hours?

A. Yes, I do.

Q. Now, can you give me a good reason, detective, why you weren't making the statement that you're making today on this stand?

A. I'm testifying to what I know, and that is my good reason.

Q. That's your good reason?

A. That's the reason.

Q. And yet you don't know what you and Budd Rigg talked about before you went down there.

A. I didn't say that.

Q. Well, do you know what you talked about?

A. Not specifically, no, but I didn't say I didn't know what we talked about.

Q. Well now, do you or don't you know what you talked about, you and Budd Rigg.

A. We were talking about the investigation.

Q. Now, that shouldn't have been so hard to get from you, should it?

[fol. 450] A. You asked me specifically, now it's a general question about what we talked about.

Q. It's pretty obvious you're trying to convict the chief, isn't it?

A. No, no sir.

Q. Have you used the chief for any of the officers or any of the officers of Bellmawr in any matter that you're interested with the state police?

A. Would you repeat that question, I didn't get it.

(Reporter reads question to witness.)

A. No sir.

Q. Didn't you just a couple of weeks ago have Mrs. Naglee testify for you before the state police?

A. Yes sir, Mrs. Naglee, not the chief.

Q. That's all, I said anybody at the office, that's all, Mr. Corbin.

Redirect examination.

By Mr. Aiken:

Q. Now, Mr. Corbin, you testified to what I think you called substance of what Chief Garrity said, did you not?

A. Yes.

Q. But do I take it from what you said that you don't remember specifically everything that Chief Garrity said, every specific word?

Mr. Malandra: I object, it's not proper re-direct.

The Court: I'll overrule it. I think it is.

[fol. 451] A. I can't recall specifically, no.

Q. And you were telling us what the substance of Chief Garrity's statements were, in relation to this matter?

A. Yes sir.

Q. That's all.

Mr. Malandra: May I ask that all that testimony be stricken. He is talking about what in substance took place, he is testifying what he heard and what he said.

The Court: I'll overrule the objection. I feel that it has no merit. Objection to the court's ruling may be entered upon the record. Are you finished with this witness?

Mr. Malandra: Yes sir.

Mr. Aiken: Yes sir.

The Court: All right, you may step down.

(Witness excused.)

Mr. Aiken: Your Honor, I have one more witness, I don't whether the court wants me to call him before lunch.

The Court: No, I think perhaps if it is going to take a little bit of time, I would prefer to let the jury hear the whole thing at the same time, both the direct and cross-examination. At this time we'll adjourn until two o'clock. Room 324, two o'clock.

(Noon recess.)

[fol. 452] The Court: I think we have finished with the last witness, is that correct?

Mr. Aiken: That's right, Your Honor.

The Court: You may proceed, Prosecutor.

Budd M. Rigg, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Your name is Budd M. Rigg?

A. That's correct, yes.

Q. You are the Mr. Rigg that's been mentioned in this trial on several occasions?

A. Yes I am.

Q. And you were in June of 1961, a Deputy Attorney General?

A. That's correct.

Q. In that month, do I understand correctly that in accordance with a Supreme Court order, you undertook an investigation relating to certain matters involving motor vehicle charges in the Borough of Bellmawr?

A. Actually, I undertook the investigation in July, the Supreme Court order was dated the 30th of June and I was assigned to the investigation I think in the first week of July.

[fol. 453] Q. Now, what generally did you do in connection with the investigation of those matters in Bellmawr?

A. Well, after reviewing the materials that were turned over to me pursuant to the order, Detective Corbin was assigned to assist me, and the first thing we did was to go to Bellmawr to the police station to talk with the chief of police.

Q. Do you recall when that was?

A. It was the middle of July, I think the end of the second week of July.

Q. And what was the nature of your investigation with Chief Garrity?

A. Well, essentially I introduced myself and Detective Corbin and advised him of the purpose of our visit that I would be conducting this investigation. I gave him a copy of the Supreme Court order which had been turned over to me, and had, as I recall, some general questioning relating to the procedures and the operation within the police department in connection with municipal court on traffic matters.

Q. Now, was there any other conversation on that occasion between you and Chief Garrity that related to the matters under consideration here today?

A. Not that I recall.

Q. Did you at some subsequent time have any further conversation with any of the defendants?

A. Yes, most of my conversations were with Chief Garrity. I would contact him, I would say all told during the course of the investigation, about six times, seven times, some of the conversations I had with him were procedural, however in September of 1961, I did go down to the police station to see him with Detective Corbin, and, as I [fol. 454] recall, he was not there. He was at home and we had proceeded to his home. I wanted to talk to him there.

Q. What was the nature of the conversation you had with Chief Garrity at his home in September?

A. Well, as a result of certain investigation, I had undertaken during the course of investigation from July to September, I wanted to question him concerning generally the problem of downgrading drunken driving cases, and I asked him specifically whether that had been engaged in by him, and he protested that it had not.

Q. Now, did you have any subsequent conversations with him concerning the matter of alterations of drunken driving tickets?

A. Yes, specifically on November 10th, when I took the statement there were some questions there, pertaining to that, and then subsequent to that after reviewing his testimony and I had in the interim seized the court docket books and the criminal docket book, I had seen what I thought was a pattern in the handling of certain motor vehicle matters in connection with disorderly conduct charges, and, as the result of that Detective Corbin and I returned to the police station and seized from the records which they had there, which I had impounded, some of the summonses which are in question here. After reviewing those then in November, I believe it was, the latter part of November or early December, I returned with Detective Corbin to the police station and confronted him with the summonses and asked him what had happened and who had participated and the like.

Q. And, generally, what was his reply to your confrontation and your questions relating to the drunken driving ticket?

A. At that point in relation to these summonses, they did [fol. 455] say to me that he was aware of them, and that they had been done with his consent as opposed to what he told me back in September. I also at the same time in going over the records, I wanted the medical reports prepared and submitted to the police department by the doctor who made the examinations, and I was unable to find them and I asked the chief about them and he indicated that because they had changed or downgraded the offense, he had disposed of those.

Q. Was he specific as to how he had disposed of the doctor's reports?

A. No, he was not. During that same course of investigation, it had also become apparent that there was a discrepancy in the amounts of monies posted by these various defendants, and the amount accounted for, and I questioned him about that and he indicated that there was a greater amount taken than which was shown in the records and that he then told me what had been done with that money.

Q. Now, in these statements that have already been read into evidence, both in connection with Mrs. Naglee's questioning by you and also Chief Garrity's, there is reference to an envelope, and I show you an envelope and I guess you would call them the contents and also another piece of paper and ask you if you can identify those.

A. Yes, this is the envelope which was taken from the Bellmawr police department safe on November the 10th, by Mrs. Naglee, and which was opened in my presence by Chief Garrity. It contained an original complaint charging Joseph H. Scott with disorderly conduct, and violations of the disorderly conduct act, Section 29, together with eighty-five dollars in cash.

[fol. 456] Q. Now, there is a name on the envelope, I believe, can you tell us what that name is?

A. Yes, it's the name Scott.

Q. Now, there are some figures on the back, what are those figures and what was the explanation, if you can recall, given by either Mrs. Naglee or Chief Garrity in relation to those figures?

A. In relation to the name Scott, I questioned Chief Garrity and he advised me that he had written this name on the envelope, and had given it to Mrs. Naglee. Mrs. Naglee told me when I asked her that the writing on the reverse side of the envelope, together with the figures was hers, and if I may read it, I can explain what she said to me about it. There is designated on the back of the envelope the word careless, across from that ten dollars and five dollars, beneath that disorderly, one hundred five dollars, beneath that, doctor, twenty dollars, and then there is a line with a total one hundred thirty dollars and ten dollars, beneath that is two hundred twenty-five dollars, directly beneath that is one hundred forty dollars, marked with the word paid, showing a balance of eighty-five dollars. Mrs. Naglee indicated to me that this was the form of accounting to show what happened in relation to monies which Scott had turned over to them, the two hundred twenty-five dol-

lars was supposed to represent the amount of money which he turned over and the figures after careless, disorderly and doctor were the deductions from that amount, the eighty-five dollars as marked on the back was supposed to represent the eighty-five dollars in cash here.

Q. Now, in connection with your investigation in relation to the eight so called drunken drivers mentioned, in the indictment, I think you're familiar with their names, are you not?

[fol. 457] A. Generally, yes sir.

Q. Well, just so there's no misunderstanding, I will tell you their names. Robert A. Franklin, John Gregal, Linwood Finney, William Snyder, Robert Killian, Phyllis Zippel, Herbert Brining, Joseph Scott. Now, in relation to any of those eight people, during the course of your investigation, did you find any other similar envelope or money supposedly being held?

A. No.

Q. That's all.

Cross examination.

By Mr. Malandra:

Q. Now, Mr. Rigg, as I understand it on that envelope contains eighty-five dollars.

A. That's correct, yes.

Q. And on the outside of the envelope it says careless, ten dollars fine and five dollars costs.

A. It says ten and five, it doesn't say costs.

Q. And it says disorderly, one hundred five dollars.

A. Yes.

Q. And doctor's twenty dollars?

A. That's correct.

Q. And that indicates that they have paid out of that money one hundred forty dollars.

A. That's what Mrs. Naglee said, yes.

Q. And left a balance of eighty-five dollars?

A. According to what she said was paid, yes.

Q. Did those figures come out right?

A. According to what she said was paid, yes.

Q. The figures are right?

[fol. 458] A. The addition is correct and the subtraction is accurate as it's shown here, yes.

Q. Have you looked at the dockets at all in the Scott matter?

A. Yes.

Q. And isn't that ten dollars and five dollars in there?

A. Yes.

Q. And isn't the one hundred five dollars entered in there?

A. Yes.

Q. Did you hear the doctor testify that he got paid twenty dollars?

A. The doctor told me that he had been paid, yes.

Q. So that there is nothing wrong with that one hundred forty dollars, nobody kept that money.

A. The one hundred forty dollars, no, apparently not.

Q. It was paid out to the proper people?

A. One hundred forty dollars, yes.

Q. And you got the balance of the eighty-five dollars there.

A. There is eighty-five dollars here, yes.

Q. And that was in the safe for how long?

A. I don't know, I was told by the chief it was in there for approximately a year, a year and a half.

Q. Now, am I to understand that you headed the investigation, did you not?

A. Yes.

Q. The chief responsibility of investigation was placed upon you as Deputy Attorney General, is that right?

A. Up to a point, yes.

Q. And Corbin was there just to assist you, is that right?

A. Yes.

Q. And did you do all of the questioning or did Corbin do it?

[fol. 459] Q. As far as I can recall, I did it, the bulk of it.

Q. You did most of the questioning?

A. Yes.

Q. That's all.

Redirect examination.

By Mr. Aiken:

Q. On my direct, I meant to offer the envelope and the money and the complaint that I showed to Mr. Rigg, into evidence, and I forgot to do.

Mr. Malandra: I have no objections.

The Court: Next successive marking, S-31 in evidence.

(The aforementioned article received and marked as Exhibit S-31 in evidence.)

Q. The figures on the back of the envelope are Mrs. Naglee's as I understand it.

A. That's what she said, yes.

Q. And—

Mr. Malandra: I object to that answer, if Your Honor please.

The Court: Why?

Mr. Malandra: He's asked whether or not that is the [fol. 460] handwriting of Mrs. Naglee, and he says that what she says or if the figures are of Mrs. Naglee.

The Court: He said the figures on the back of the envelope are Mrs. Naglee's, and the answer by Mr. Rigg was that is what she told me, isn't that an admission by Mrs. Naglee, according to his testimony, whether the jury believes it or not.

Mr. Malandra: I have no objection, if that is the purpose of it.

The Court: Now, that's what Mr. Rigg said.

The Witness: That's right.

The Court: You didn't answer the question exactly as the Prosecutor put it, in effect he said without saying all this but I construe it as meaning to be that he apparently showed the figures to her some time and she admitted that she put those notations on there. All right, continue.

Mr. Aiken: I have nothing further.

Mr. Malandra: That's all.

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[fol. 463] MOTION FOR JUDGMENT OF ACQUITTAL

Mr. Malandra: May it please the court, I move for a judgment of acquittal on behalf of the three defendants. Your Honor please, this indictment is rather lengthy, and is not drawn especially like the usual conspiracy indictment. This indictment sets forth practically all of the facts that the prosecution intends to prove. However, it does contain the usual charges of the defendants did knowingly, unlawfully, and corruptly agree to dispose of certain traffic tickets.

Now, Your Honor please, my chief objection and my chief argument for a judgment of acquittal is that I believe that the prosecution has not proved a conspiracy. I believe the prosecution has set forth an alleged many facts that are in my opinion not related. They are isolated facts thrown into the case. I do not recall any testimony showing that there had been an agreement, a meeting of the minds, of these defendants for that purpose. I do not recall any testimony where these defendants, any two of them or three of them, met and planned in advance to downgrade or alter any of these tickets. I think the prosecution has proved that certain tickets were downgraded, and I think they have proven that Mrs. Naglee was the court clerk and the violations clerk, and that she did in the course of [fol. 464] her job at the instructions of her superior, did make some changes on some tickets. But, I do not believe that there was ever a meeting of the minds or that there was ever any plan to alter these tickets.

Now, may it please the court, it has also been proven and at this point undisputed by the witnesses of the state that they were not drunk. The witnesses themselves testified that they were not drunk and Your Honor please, this leaves a wide open field as to whether or not there was a downgrading of these tickets because the witnesses themselves undisputed may I say that they were not drunk. Now, I think that the gist of this entire indictment if it please the court, is the so-called agreement or so-called conspiracy, and I cannot say whether they're connected in any way. I believe a lot of isolated facts have been thrown in, and actually on the part of each of the defendants in their respective jobs as for example Edward Virtue, who is the policeman who made the arrests, and clerk who subsequently changed the ticket at the request or suggestion of the chief of police who was in charge. I believe that isolated instances have been proven, but there has not been a combination.

I do not believe that there is any proof that they unlawfully or corruptly or knowingly conspired to alter these tickets. Therefore, Your Honor please, I respectively submit that the conspiracy itself has not been proven and a judgment of acquittal should be granted on behalf of the three defendants.

Mr. Aiken: If the court please, I think that there is ample proof of a conspiracy, I'm sure the court is aware that there's no obligation of the state to prove the three defendants actually got their heads together a particular [fol. 465] time or at a particular place and decided to do that. It was sufficient to show that there was an understanding among them. Now, specifically in reference to that understanding, I call the court's attention to page 5 of Chief Garrity's statement to Mr. Kaplan which reads as follows: "So that in each of these cases, which I will show you that practice was followed as far as you know? Answer, As far as I know. Question, Now these officers who made these original complaints on which summonses were

issued, were they required to be interviewed and their consent obtained before you directed Mrs. Naglee to make the change provided you agreed the change be made? Answer, Yes. Question, That was the general procedure? Answer, There was none with objection on their part."

Mr. Malandra: If Your Honor, please, I don't want to interpret the prosecutor, but he is reading the testimony that has been stricken out from the record.

The Court: May I see. I don't think either of us would accuse him of using methods that would be frowned on. I know him well enough to know he would not do that. Now, this is to page 6. Now this book covers, I think we have agreed to that. I directed your attention to the bottom of page 5 in this book it is marked start here.

"Question, So that in each of these cases which I will show you, the practice was followed as far as you know? Answer, As far as I know, yes. Question, Now these officers who made these original complaints on which the summonses issued, were they required to be interviewed and their consent obtained before you directed Mrs. Naglee to make the change, provided you agreed the change to be made? Answer, Yes. Question, Was that the general pro-[fol. 466] cedure?" And then there is an answer there, there was none, there was an objection on their part, then it says stop and go to page 131.

Mr. Aiken: That was the subsequent proceeding, Your Honor. I'm sorry, I didn't have that marked.

The Court: "Question, That was the general procedure? Answer, There was none with the objection on their part." Then you continued on, that was all stricken. My note says stop and go to page 131.

Mr. Aiken: Well, at any rate, I think it is clear without referring specifically to it.

The Court: I don't think it'll be necessary for you to argue further because the court of course has paid a great deal of attention to all of the testimony that has gone in and the law as the court understands it to be as follows:

Number one, for the purpose of this motion, we must assume that every bit of testimony put in by the state is correct and we further must assume that in its ruling upon the motion, the court has a right to draw from any and all of that testimony in any inferences that may legally and reasonably be taken therefrom. Now, of course, by the time we consider the lengthy statements, even with the exclusion by the court, given both to Mr. Kaplan and to Mr. Rigg, there is much in those statements, whether it be true or whether it not be true, of course, is for the jury, that is for the purpose of this motion must be seriously considered.

Of course, the whole case up to this point seems to rest chiefly upon the statements that were given by the defen- [fol. 467] dant on both occasions. There is some thinking and perhaps with merit in the federal court, as far as the proof of a conspiracy is concerned, obviously Mr. Malandra, you've correctly stated the law, the gist of the conspiracy, in other words, the basic amount that has to be proven is the unlawful agreement between the parties. And, if you cannot prove the unlawful agreement, that is the end of the case even if you can show one hundred different overt acts. In this state, however, the law seems to be rather queer. The impression I believe in the federal court although I make no pretense of being an expert as far as federal law is concerned on this point, used to be that first you prove the actual confederation between the defendants themselves, and then after you prove that you went on to the overt acts or act whichever there was, and then the thought as the court understood it on the part of the federal interpretation of the law was that the proof of the confederation must be done without resorting to the overt acts. The law of the State of New Jersey, however, is entirely different than that and without going into many cases, I will refer merely to two.

Number one is an appellate division decision, it is the case of State vs. Graziani, 60 New Jersey Super. page 1,

the opinion was written by Judge Freund, the court then sitting being Judges Goldmann, Freund, and Haneman. The case deals with this particular point and the expression is may concerning the basic elements of conspiracy as follows. "A conspiracy is rarely capable of proof through direct evidence and the unlawful agreement is most frequently established by inference drawn from proof of overt acts done in pursuance of it and circumstantial evidence is often more certain, satisfying, and persuasive than direct evidence." So that in the Graziani case, the court says you [fol. 468] can take the overt acts that are set forth and are allegedly proven by the state and if it may be inferred from them that there was an illegal agreement between the parties, that that is sufficient to create a jury question at least, as far as the existence of the illegal combination, confederation or agreement, which is of course a necessary element of conspiracy.

I refer further then to the case of State vs. Carpone, reported in 10 New Jersey, 329, the opinion in that case was written by Justice Heher, and may I say further that Justice Wachenfeld defended as Justice Haneman did in the Graziani case of the appellate division, but of course we do have the majority of the Supreme Court speaking on this very point in the following language: "The act of conspiracy is the gist of the offense of conspiracy, but it is not necessary to show an actual association or confederacy and it may be left to reasonable inference." Well, this court's construction of that means, or in any effect, I guess was placed for the finding in State vs. Graziani which was decided perhaps six or seven or eight years after the Carpone case, applying the principle of law therefore to this case and considering all of the evidence that has been presented by the state, most particularly the alleged statements given by the defendants, the court feels that sufficient inference may be drawn from that to make a jury case.

In other words, to have the factual issues decided by a jury. Your motion therefore is denied, as to each of the

defendants. The court's ruling in any and all reasoning thereon may be entered upon the record as an objection on behalf of each one of the defendants.

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[fol. 470] HELEN B. NAGLEE, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Malandra:

The Court: Before you start, Mr. Malandra, I wonder if I could ask your permission to have a slight conversation with Mrs. Naglee before there is any testimony taken. Now, Mrs. Naglee, from something that has been already presented in the case, there is some representation whether the same be true or false, I know not, that at some time previously you suffered from some type of a heart disorder, is that correct?

The Witness: That's correct.

The Court: Now, with the court having that represented to him, the same situation will apply as is I understand applied before when you were answering certain questions. If at any time during your being on the stand being asked the questions, you feel the slightest discomfort, you draw that to the attention of the court. I say that now because the average person doesn't realize the job of appearing in court on a witness stand or the like. And courts, unless you're somewhat hardened to them, like maybe I am and most of the attorneys likewise are, cause a certain amount of nervousness to people. So, if at any time during the case, especially when you're testifying, you feel the slightest discomfort, you draw that to the attention of [fol. 471] the court and the proper measures will be taken to see that the situation may be corrected.

The Witness: Thank you very much.

The Court: Is there any objection to that explanation?

Mr. Aiken: No objection.

Mr. Malandra: Thank you very much, sir.

Q. Now, Mrs. Naglee, what is your occupation?

A. I am violations clerk on the municipal court clerk in the Borough of Bellmawr.

Q. Are you married, Mrs. Naglee?

A. I am a widow.

Q. Do you have any children?

A. I have two sons, my eldest son died very suddenly the 14th of February.

Q. Of this year?

A. Yes, this year.

Q. Now, Mrs. Naglee, you say that you are the violations clerk and the court clerk in the Borough of Bellmawr.

A. That's right.

Q. How long have you held those jobs?

A. Since 1947.

Q. Have you held both those jobs constantly since 1947?

A. No, I was replaced as court clerk in I think what was June of 1960 until Mrs. Ferry took over then until the 31st of December, then I was re-appointed the first of the following year.

Q. That would be for about six months?

[fol. 472] A. That's right.

Q. Now, will you explain, Mrs. Naglee, to me what your duties are as the violations clerk?

A. Well, the duties of a violations clerk are people that don't care to appear before the judge and they come in and sign a waiver and then I can accept that fine.

Q. This being motor vehicle cases?

A. Yes.

Q. And what is your duty as clerk as a court clerk?

A. Well, as the court clerk I sat in the court with the judge when on the night he presides which is Wednesday, and have the complaints made up for him that he's to hear and, well that's it, I guess.

Q. So that your duties in the municipal courts would be the same, for example, as Mr. Perotti's here in this court. You sit right in the courtroom while the procedure is going on.

A. I sit in but we have a Sergeant of Arms that performs that.

Q. Well, Mr. Perotti has a high class title. He is a Deputy of some sort, and also the clerk of this court. He sits here and is at the beck and call of the judge, is that your job?

A. I sit right next to the judge and hand him the cases.

Q. Now, do you in both those positions have books that you enter your cases in and your fines and so forth?

A. Yes.

Q. Now, is there a recent set of books for the violations clerk?

A. There's a traffic control book. The cases that I handle in violations bureau are entered in that, and then they're transferred to the disbursements book for a deposit.

Q. So that you handle the books for the municipal court and the violations clerk of the Borough of Bellmawr?

[fol. 473] A. That's right.

Q. Now how many judges have you worked for, Mrs. Naglee?

A. Well, shall I name them?

Q. If you can, yes.

A. Carl Auerbach, Charles Rudd, Benjamin Dzick, and now Saul Teitelman.

Q. May I ask you a very delicate question and ask how old you are?

A. Well, I'm sixty-five.

Q. Now, as the municipal court clerk and violations clerk, are your books audited regularly?

A. By the Borough auditor every year.

Q. Once a year your books are audited by the Borough auditor?

A. That's right.

Q. Is that a common practice?

A. That's a regular practice.

Q. Now, have you on occasion also been checked by the State auditors?

A. Well, I was before this investigation started, Mr. Aiello was down, that was when Judge Teitelman first had taken over and I guess that was at least six years since this one had been there.

Q. Has at any time your books been audited, has there been any question about how well they were kept?

A. No.

Q. Has any discrepancy ever been shown in your books as long as you have been there?

A. No.

Q. Now, Mrs. Naglee, how often would you see the judge in Bellmawr?

A. Just on court night.

[fol. 474] Q. What night was that?

A. Wednesday night.

Q. Now, when you had any decisions to make concerning the violations department of the municipal court department, who would you go to?

A. Well, I went to Chief Garrity because he was always available.

Q. So did you consider Chief Garrity as your boss?

A. I definitely did.

Q. And was Chief Garrity around constantly?

A. Yes he was.

Q. Did you work day or night?

A. Did I?

Q. Yes.

A. I worked day time.

Q. And your court session is when?

A. Seven to nine on Wednesday night.

Q. So that's your job, you're usually working in the day time except the one night when the judge sits, is that so?

A. That's right.

Q. Now, there's been some testimony alleging that there was an agreement between you and Edward Virtue and Chief Garrity to alter certain tickets, is that so?

A. That is not so.

Q. Was there at any time any agreement between you and Chief Garrity to alter these tickets?

A. Never.

Q. Was there at any time any agreement between you and Ed Virtue to downgrade these tickets?

A. No sir.

Q. Now, I call your attention, Mrs. Naglee, to the statement that you gave on December the 4th that might not be the right day, December 5th, to the Prosecutor of Camden [fol. 475] County. Page 4, this was the statement given to Mr. Kaplan and you were asked this question, "Mrs. Naglee, you're probably aware of the fact that this investigation stems from reports and later evidence of the fact that motor vehicle summonses have been altered and changed in some cases and you answered yes." Was that question asked you and did you give that answer?

A. Yes I did.

Q. And were you asked this question, "Do you say generally that was a fact there have been cases where tickets have been changed or fixed, whatever you want to call it? And you answered "I would rather say altered." Was that question asked of you and did you make that answer?

A. Yes I did.

Q. Now, were you asked this question, question "And that has been a practice for some time in Bellmawr? and the answer It wasn't, I don't know how to put it, it wasn't a practice. It was a case where someone had gone to the chief or something, it wasn't all cases." Were you asked that question and did you give that answer?

A. Yes I did.

Q. So that you informed the prosecutor on December 5th that there was no such thing as a conspiracy to alter tickets, is that so?

Mr. Aiken: I object. This is a leading question, very leading.

The Court: I'll overrule the objection. We're trying to handle this whole thing on its merits within reason as the court sees it. In fact, may I say for the record at one time a group of trial judges were together being addressed [fol. 476] by a very important member of the judiciary. Certain questions were asked and many problems were given to the gentlemen for the advice of trial judges such as myself and may I say further in the county court. I'll never forget the advice he gave us as trial judges as far as criminal cases were concerned. Substantially, what he said was this, that any criminal case particularly the judge should use considerable latitude in the discretion that he should allow as far as the examination of the defendant was concerned. He said I can lay down for you no hard and fast formula or rule. He said if you will follow this general philosophy to try every criminal case on its merits without confusing it with legal technicalities, as far as you are concerned personally there will be in my opinion very few reversals in the upper court.

In looking at decisions out of the appellate division on criminal cases and in viewing much of the appellate procedures that are now going on by letter writers in state's prison on this court at least feels that that admonition is even being carried out by the appellate divisions who are appointing lawyers every day of the week without having the money to pay them or without them being paid whose job it is to inquire into the cases and raise objections which I as a trial judge, feel are absolutely ridiculous. Under the circumstances gentlemen, unless there be any misunderstanding as far as my feeling in this matter or in any other criminal case, you've appeared before me many many times, Prosecutor and I'm not adopting this attitude today. That has always been my attitude both when I have the privilege of serving six years in the Prosecutor's office and approximately seven or eight whatever it is on this bench so that the record will be clear on that point. Proceed.

[fol. 477] The Witness: Yes.

Q. Now, was the chief there constantly during the week in the police station?

A. Well, he'd be in and out, but he spent most of the time, he was always available, in other words because if I needed him, he has a radio in his car and I could have him called in.

Q. He was available to you at all times?

A. That's right.

Q. Now, there are some other tickets here, Mrs. Naglee, where you have made changes. Did you do this of your own accord?

A. No.

Q. How would these changes come about?

A. Well, the chief would say Helen, I'd like you to make this 39:4-97. I've talked to the people and I would do what he told me. I put on 39:4-97.

Q. Did you know any of these people on these tickets?

A. No, I don't know any of them.

Q. Now, were these changes made in an ordinary course during a business day?

A. Yes.

Q. This was your job, was it not?

A. That's right.

Q. Now, there's some talk about money, Mrs. Naglee, did you at any time ever get any money for altering any of those tickets?

A. I did not.

Q. And you personally, did you ever receive any emolument of any kind for downgrading those tickets?

A. Never.

[fol. 478] Q. Do you know whether Edward Virtue or Chief Garrity ever got any money from those tickets?

A. Not to my knowledge, and I doubt it very much.

Q. Now, there was some money that was left in your custody after these cases were completed, is that so?

A. That's right.

Q. Can you tell me what happened to that money?
A. You mean what was purchased with that money?
Q. What happened to the money.
A. Well, I know for one thing we bought a resuscitator.
Q. What's that.
A. That breathes for a person.

Mr. Aiken: For the record, I understand the court's feeling, but just for the record I feel I have to get an objection on the record to this type of testimony, Your Honor, because I—

The Court: The court will rule on that right now lest there be any misunderstanding. Down toward the end of the indictment, the court in reading the indictment sees that the indictment raises the impression that this money may have been appropriated by these people for their own use. The indictment perhaps had been more explicit, as far as that, then there might be some merit to your objection, but in reading on the second page of this indictment, this court gets the impression that the state is charging that these people used whatever monies was held back if there was any held back for their own particular use, in proper protection of the rights of the defendant therefore, if that is not true, the allegation made on the part of the lady is that it is not. The court feels that in fairness and justice to the three of them, it should be made part and [fol. 479] parcel of the testimony. I will therefore overrule your objection. Objection is overruled. Proceed.

By Mr. Malandra:

Q. Now, will you tell me what that resuscitator is?
A. Well, I don't know too much about it, with the exception I heard the boys talking that it breathes for a person.
Q. It's used in helping people breathe?
A. That's right.
Q. Now, Mrs. Naglee, did you at any time during this period of 1959 of 1961, did you at any time think that you were doing anything wrong?
A. No, I did not.
Q. That's all.

Cross examination.

By Mr. Aiken:

Q. Mrs. Naglee, if at any time during the course of my questioning, you feel in need of a recess or a drink of water, will you be sure to indicate that to the judge.

A. Yes, thank you.

Q. Now, as I understand it, Mrs. Naglee, you have just testified that in effect Chief Garrity directed you to make these changes.

A. Yes I did.

Q. Didn't you know, Mrs. Naglee, that there was a prescribed procedure for making changes on traffic tickets?

A. What?

Q. Did you hear Judge Teitelman testify here the other day?

[fol. 480] A. Yes I did.

Q. And did you hear him say that where a traffic ticket was issued in error or something of that nature, that the ticket was to be voided in the ticket control docket?

A. No, I didn't hear him say.

Q. You didn't hear him say that?

A. No, I don't recall him saying that it should be voided, before it be changed, because when Chief Garrity would say I'd like you to make this 4-97, I did it because I felt that they had discovered that the man positively was not a 39:4-50 charge.

Q. Well now, Mrs. Naglee, did you or did anyone as far as you know in the Borough of Bellmawr, keep a traffic control docket?

A. Yes.

Q. Did you keep it?

A. I kept the traffic control.

Q. And didn't you enter tickets in there and mark them void that were issued in error for some reason or another?

A. There was one that was either by rain or something like that?

Q. So that you did enter some tickets in the ticket control docket?

A. Not that they had been written on, no sir. It was either rain or—

Q. Well that's not the question.

The Court: When you say rain, what do you mean?

The Witness: Well now, they carry the tickets in the windshield wiper and—

The Court: In other words on account of water or [fol. 481] rain, some part of the ticket might be obliterated, is that correct?

The Witness: Yes.

The Court: All right, proceed, Prosecutor.

Q. So that you did enter some tickets in the traffic control docket?

A. Yes.

Q. And you knew the purpose of the traffic control docket, didn't you, Mrs. Naglee?

A. Yes.

Q. And what was that purpose?

A. To keep a record of when the ticket was issued and when it was disposed of.

Q. Well, didn't the traffic control docket pertain—

A. Are you speaking of the docket or the ticket control, it's a tablet form.

Q. Ticket control, where the voided tickets were to be entered.

A. Well, that's right, yes.

Q. You entered some tickets in there?

A. Like I just explained, if that was the reason they had to be voided, yes.

Q. And weren't you instructed that all tickets of that nature that had something wrong with them were to be entered into the ticket control?

A. Well, I didn't feel these tickets had anything wrong with them.

Q. I just asked—

[fol. 482] The Court: Now please listen to the question. You see he is asking you a particular question. I mean the nature of this was, and I'm not quoting exactly, weren't you told, now please answer that, I mean when you go into explaining why he hasn't asked you that question so if you listen, if you do not understand the question, then say so and he will reframe the question so that he will get the answer to the specific question that he is asking you. You see if you start answering something else that has nothing to do with this question, he has a perfect right to ask you certain particular questions, and of course, you have the obligation to answer those particular questions. If there is anything incorrect with them or the like, your attorney will in all probability object.

Mr. Malandra: May I ask sir, if this particular docket book that the Prosecutor's office is talking about is in evidence.

Mr. Aiken: Not that I know of.

Mr. Malandra: Well then, I object, if Your Honor please, to this questioning.

The Court: Overrule the objection. I think it is proper. He is asking her what her duties and obligations were in the position that she held and I think it's perfectly regular. Now, reframe your question, Prosecutor, and listen and merely answer that question.

By Mr. Aiken:

Q. Do you understand that question, Mrs. Naglee?

[fol. 483] A. I understand what you're saying, but I don't think these tickets came in that category.

The Court: He's not asking you about those, he's asking you a general question. Didn't you understand that any and all tickets that were voided did you say are supposed to be voided—

Mr. Aiken: That had anything wrong with them.

The Court: Should have been entered into the certain book called ticket control or something like that.

The Witness: Well, I don't feel that there was anything wrong with it because Chief Garrity told me to make the change.

Mr. Malandra: Just answer the question.

The Witness: I don't know how to answer him.

The Court: Supposing I ask you this. As far as you are concerned, and let me give you an explanatory part of it too, in the position that you had there was a certain system set up to handle the motor vehicle matters, isn't that true?

The Witness: Yes.

The Court: Now, what the Prosecutor is asking you is this, let us assume for the sake of argument that there is something wrong with the ticket, we'll say the rain fell on it or the water, it was partially obliterated or the ticket [fol. 484] fell on the ground and was all covered with dirt and you couldn't read it. Now, the Prosecutor said wasn't it part and parcel of your job and didn't you have specific instruction that a ticket of that nature should have been entered in a certain particular book and that certain particular way.

The Witness: I was never instructed where a ticket, the violations was changed, to enter that in the voided column, no.

By Mr. Aiken:

Q. Well, didn't you know, Mrs. Naglee, that it was improper to alter tickets?

A. I never took it into consideration, it was illegal or improper.

Q. Well, you were the court clerk and you have been for some fifteen years.

A. That's right.

Q. Do I understand you to say that you didn't know it was improper to change a ticket?

A. I didn't feel that it was improper.

Q. I'm asking you what you knew, Mrs. Naglee, not what you felt. Didn't you know that it was improper?

A. No, I didn't think, shall I say that I thought it was wrong.

Q. Well, from time to time, directives come down from the office of the Administrative office of the courts to your court?

A. From Trenton?

Q. Yes.

A. No, they do not.

[fol. 485] Q. Didn't Judge Teitelman ever say anything to you about—

A. Judge Teitelman never looked at the ticket control or the docket.

Q. No, I'm asking you what he said. Didn't he ever say anything to you about tickets couldn't be changed?

A. Well, I thought that I amended it like he amended it. He amended them in court, I amended them for the chief.

Q. And did you think that your duties included the right to alter tickets?

A. I really didn't take that into consideration. If he told me to do it, I did it.

Q. Well, do I understand that you didn't make any attempt to find out whether this was proper or improper?

A. I felt that it was doing the right thing.

Q. Did you make an attempt to find out whether it was right or whether it was wrong?

A. What should I have done?

The Court: Now, please listen to me. Don't you see we are working a case in court, there are certain particular rules and regulations that govern. They govern me, they govern your attorney, they govern the Prosecutor, and they govern you as a witness. Now, let me show you where you made a mistake in answering the way you did. He asked you a question which is perfectly proper and you said to him you don't both answering this question, but you say what should I have done. Now, you see that causes nothing but confusion. Questions are asked, and if in the opinion

of your attorney, the question is improper, he objects. Then I rule on whether the question is or is not improper. If the question is not improper, you do not have to answer it. If it is proper, I say to you it is a proper question, [fol. 486] answer it. Now, you see apparently what you're doing is you're not paying too much attention to the question that the Prosecutor is asking you and when you give an answer, the answer that you gave is totally irrelevant. It answers some other question that he didn't even ask you, you see. All right.

The Witness: No.

Q. And it never came to your attention in your fifteen years as court clerk that it was wrong.

A. No.

Q. Now, Mrs. Naglee, you received certain monies from some of the defendants, excuse me, some of the persons who were charged with drunken driving that we have discussed previously, did you not?

A. If my name is on the receipt, yes I received it.

Q. Now, are you talking about the little receipt of this size or the big receipt?

A. The large receipts I always make out. That is the duplicate.

Q. Mrs. Naglee, I show you what is marked S-21 which has a receipt attached and ask you if that is your signature.

A. Yes, now wait a minute, yes that's mine.

Q. What is the date of that receipt, Mrs. Naglee?

A. October 14, 1959.

Q. And it shows that you received a hundred eighty dollars from one Robert Killian, does it not?

A. Yes it does.

Q. And that was ten days after the ticket was issued, if you will refer to the ticket.

A. Yes, I believe it was.

Q. I think the ticket is October 4th, isn't it?

[fol. 487] A. Yes, October 4th.

Q. Now, did you receive a hundred eighty dollars from Robert Killian on October the 14th?

A. I must have, that's my receipt.

Q. Will you tell us, Mrs. Naglee, what happened to that money?

A. You mean when Mr. Killian gave it to me?

Q. Yes, what did you do with the hundred eighty dollars?

A. Well, I evidently turned it over to Chief Garrity.

Q. All of it?

A. Yes I would say all of it.

Q. And was this in cash, Mrs. Naglee?

A. It must have been cash because it took say—it must be cash.

Q. Did you say that you turned the whole hundred eighty dollars over to Chief Garrity?

A. Yes I did.

Q. Do you know what he did with it?

A. Well, I know what he done with some of it.

Q. Well tell us what you know what he did with some of the money?

A. Well, he asked me to change the ticket to 39:4-85, which I did.

Q. Now was that on the same day as the receipt, Mrs. Naglee?

A. I don't have my glasses on. It was I believe October the 16th, isn't it?

Q. Well now, Mrs. Naglee, the receipt, the small receipt that is dated October the 14th?

A. Yes.

Q. Was that the same day that Chief Garrity asked you to change the ticket, if you remember?

A. If Chief Garrity asked me to, the chief must have [fol. 488] asked me on the 16th because that's when I made out the official receipt.

Q. Well, why would you receive a hundred eighty dollars on the 14th?

A. I didn't set the bail, someone else set the bail and the man came in and gave me the bail.

Q. Is that a bail we're referring to?

A. The little white one is, yes.

Q. Well, there's another little white one there Mrs. Naglee, what is that?

A. Well, from the testimony I've heard here, that is Mr. Killian's uncle, I believe.

Q. Yes, the bail was posted by Mr. Del Rossi for two hundred fifty dollars, wasn't it?

A. That's right.

Q. On the fourth or fifth, wasn't it?

A. Yes.

Q. And yet you issued another bail receipt on the 14th?

A. This evidently was the day that Mr. Del Rossi come back and got his bail back and then Mr. Killian himself posted a hundred eighty dollars.

Q. Well now, Mrs. Naglee, was that one hundred eighty dollars that you received on October the 4th, bail?

A. It was bail—

Mr. Malandra: Excuse me a moment, it's not October 4th.

Q. October the 14th.

A. October the 4th was bail. October the 18th, someone set the bail at a hundred and eighty dollars. I didn't set the bail. The man came in and I accepted the bail and I gave him a receipt and I turned it over to Chief Garrity. [fol. 489] Q. So you turned the whole hundred eighty dollars over to Chief Garrity?

A. Yes I did.

Q. And you said that you knew what he did with some of that hundred eighty dollars, will you tell us what he did with it?

A. Well, I believe there was, I'm not sure if this was disorderly or not, I don't have the records here, I'm surmising part of it was disorderly and part of it was for this passing on the shoulder of the road.

Q. Well, you made the entries in the record, didn't you, in relation to that case?

A. I would have to, I wasn't the only one that did that.

Q. You weren't the only one who made the entries?

A. In 1959, yes.

Q. Now, Mrs. Naglee, I show you what has been marked S-12 and call your attention to it for the entry down in relation to Robert Killian, page 29 on the ticket docket, traffic docket, you made that entry in reference to Mr. Killian, didn't you?

A. Yes I did.

Q. And do you know what day you made it?

A. You mean the date of plea?

Q. No, the date you made the entry.

A. I made it on the hearing of 10-14-59 and paid 10-16-59.

Q. Now, how much was the fine and how much was the costs?

A. Five and five.

Q. And that was for a careless driving?

A. No sir, passing on the shoulder of the road.

Q. Now, what happened to the ten dollars that was mentioned there, the five and five?

A. That was deposited in the bank.

[fol. 490] Q. And who deposited it?

A. I did, it would have to be in my disbursement book.

Q. Did Chief Garrity give you that back?

A. Did he give me that back?

Q. Did he give you that money back.

A. He gave me ten dollars for this, for Mr. Killian for passing on the shoulder of the road and I deposited the money in the bank.

Q. And that was the date of the court hearing, you say?

A. It's marked hearing.

Q. Well, Mr. Killian testified, I think you will recall Mrs. Naglee, that he never appeared in court.

A. That's right.

Q. So there couldn't have been a court hearing, could there?

A. No, there wasn't.

Q. Now, your docket shows that the hearing was on October the 14th, is that correct?

A. This is on—yes, yes.

Q. That's October the 14th of 1959?

A. Yes.

Q. Now, Mrs. Naglee, I call your attention to the ticket on S-21 and ask you to tell me what the court appearance date is on that ticket.

A. The appearance is marked there the 21st, but they can waive that if they care to.

Q. Well, that's not true, is it?

A. No.

Q. Of a charge of disorderly conduct?

A. What?

Q. That's not true of a charge of disorderly conduct, is it?

A. You mean they can waive the five days for—

[fol. 491] Q. No, I'm talking about waiving a court hearing, Mrs. Naglee.

A. Oh no, I said they could waive the five day if they wanted it. No, the only thing on a disorderly conduct, the only thing is they can get a postponement.

Q. But they have to appear in court, don't they.

A. They're supposed to, yes.

Q. But you know, as a matter of fact, that Mr. Killian never appeared in court, don't you?

A. That's right.

Q. Yes. Now, the reference in the criminal docket, for Mr. Killian shows that he paid a hundred dollars fine, doesn't it?

A. In what?

Q. In the criminal docket.

A. No, he paid fifty dollars.

Q. All right, fifty dollars and five dollars costs.

A. Yes.

Q. On a charge of disorderly conduct?

A. That's right.

Q. Now, did you get that fifty-five dollars back from Chief Garrity?

A. Yes I did.

Q. And deposited it?

A. Yes I did.

Q. Now, that total is fifty-five and ten, I believe, isn't it, yes, sixty-five dollars, But you gave Chief Garrity a hundred eighty dollars.

A. Yes.

Q. And do you know what happened to the remainder?

A. All I can think is Chief Garrity will have to answer that.

Q. Well, I'm asking you.

[fol. 492] A. I don't know.

Q. Now, between the time you gave Chief Garrity the one hundred eighty dollars and the time he gave you back the fifty-five dollars and ten dollars, do you know where he kept that money?

A. Before he gave it back to me?

Q. Yes.

A. Well, he evidently had it in the envelope.

Q. What envelope?

A. We have an envelope there that has money in it.

Q. And where was that envelope kept?

A. In my drawer.

Q. In your desk?

A. Because I had the key to it, and his desk was left open and mine wouldn't be.

Q. And you had the only key to the desk?

A. No, he has a key to my desk.

Q. And was that where the money was kept, the excess money from these tickets?

A. Yes sir.

Q. Now, you had access to that money, Mrs. Naglee.

A. There's been occasions where the chief has told me to give—

Mr. Malandra: Just answer the question.

The Witness: Yes.

Q. Now, when someone wanted some of that money, Mrs. Naglee, what was the procedure for getting it?

A. Well, there wouldn't be just anyone, it would be either Chief Garrity would take the money out or sends [fol. 493] one of the officers and ask me to give them so much out of it.

Q. You mean the officer would come and say the chief said to give him so much money?

A. That's right.

Q. And then you would give the officer the money?

A. Yes, I would.

Q. Now, Mrs. Naglee, you knew that you were supposed to account for all monies that came into your hands as court clerk and violations clerk, didn't you?

A. I did know, that part that went to the Borough or to the County or to the State, yes I made an account.

Q. I am talking about all monies, Mrs. Naglee.

Mr. Malandra: Just answer the question.

The Witness: I don't know just how to say it, but the chief gave me that money to put in the envelope and I didn't question him what it was in there for.

Q. You knew where it came from, didn't you Mrs. Naglee?

A. I could presume if it was from someone like this, had been in and paid a fine, yes.

Q. And you knew they weren't paying a fine for a drunken driving charge, didn't you?

A. Well, I'd have to because I was the one that altered the ticket.

Q. Yes, you knew the money in the envelope was the excess over the total amount of the so-called fines.

A. Yes.

Q. You knew that?

A. Yes.

[fol. 494] Q. And you're telling us that you didn't know there was anything improper about that.

A. No.

Q. Now, from looking at the dockets which are in evidence, Mrs. Naglee, the Borough auditor wouldn't be able to tell that there was anything wrong with the ticket or that more money had been paid you than showed in the docket, could he?

A. No.

Q. There wasn't any possible way for him to know that just from looking at the docket, was there?

A. Comparing the docket with the disbursement book, you mean?

Q. No, I'm talking about just looking at the dockets.

A. No.

Q. He couldn't tell?

A. No.

Q. Now, when the chief asked you to change a ticket, you never refused, did you?

A. No, I thought it was my duty.

Q. In effect you agreed to change it then.

Mr. Malandra: I object.

The Court: You mean if you ask a question in other words, did you protest, I will permit that.

Q. You didn't protest, did you?

A. No.

Q. And you knew, also, didn't you, Mrs. Naglee, that the procedure in relation to the alteration of the tickets was that the issuing officer had to agree to the change.

[fol. 495] Mr. Malandra: I object. It calls for a conclusion.

The Court: That's part and parcel of her statement.

Mr. Malandra: I will withdraw it then.

The Witness: I was never in on any conference with the chief or the arresting officer. The chief would come to me and ask me to change 39:4-50 to 39:4-97.

Q. Then are you telling us now that you didn't know that the procedure was that the issuing officer had to agree to the change.

A. Well, I would presume that the arresting officer had evidently spoken to the chief, if it was a hardship case or similar, but I wasn't—

Q. Do you recall telling Mr. Kaplan that that was the arrangement?

A. No, I never said there was an arrangement.

Q. Or procedure or practice?

A. No, not procedure.

Q. What would you call it, Mrs. Naglee?

A. It was just one of those things that the chief would come in and ask me to change that ticket.

Q. But you knew, isn't it true, Mrs. Naglee, that on occasions the issuing officer, the officer who made the arrest, would come in and ask you to change a ticket?

A. No, they never came to me.

Q. And you would check with the chief to see if it was all right?

A. That's not so.

Q. It isn't so?

A. No, it is not so.

[fol. 496] Q. Well, isn't it so that the chief and the arresting officer discussed the matter in your presence?

Mr. Malandra: She's already answered that. She said she never had been in any conference.

The Court: No, she said she never had. Well, you may answer it anyway.

The Witness: No.

Q. Now, Mrs. Naglee, you remember the questioning that Mr. Kaplan did, Mr. Malandra referred to it earlier this morning?

A. Yes sir.

Q. Do you remember being asked this question and giving this answer, page 5, "Question, And that has been a practice for some time in Bellmawr? Answer, It wasn't, I don't know how to put it, it wasn't practice, it was a case where someone had gone to the chief or something. It wasn't all cases." Now, Mr. Malandra asked you that question and answer, and you said yes, but my question goes on to the next question and answer.

Mr. Malandra: Didn't say yes at all, Mr. Prosecutor, if you want to read the question and answer—

The Court: All right. Hold it. Give me the book. Page 5, second question. "Question, And that has been a practice

for some time in Bellmawr? Answer, It wasn't, I don't know how to put it, it wasn't a practice. It was a case where someone had gone to the chief or something, it wasn't all cases."

[fol. 497] Mr. Malandra: Now, there Your Honor please, the Prosecutor said and you answered yes.

The Court: Well, he has a right to lead. Obviously the answer.

Mr. Malandra: That's not the answer, he's referring to a question and answer.

The Court: All right, I will read it again and ask the jury to listen to what is in the think. "Question, And that has been a practice for some time in Bellmawr and the answer is it wasn't, I don't know how to put it, it wasn't a practice. It was a case where someone had gone to the chief or something, it wasn't all cases." That is the answer. Now, do you want the next question too?

Mr. Aiken: Yes, Mrs. Naglee, when Mr. Malandra asked this morning if you had been asked that question and gave the answer, your reply this morning was yes, wasn't it?

A. That I had been asked that question, yes, but my answer wasn't yes to the question that Mr. Kaplan put to me.

Mr. Aiken: No, I didn't say it was, but now I want to go on and ask you if you were asked this next question and gave this next answer. "Question, Not all the cases? Answer, If someone had a hardship case, he went to the arresting officer and they in turn went to the chief and he would try to give the person a break." Now, do you remember giving that answer to that question.

[fol. 498] A. I must have said it.

Q. And let me ask you if you were asked this question and gave this following answer. "Question, If the chief or the arresting officer or possibly you were contacted with the request to change it, alter it, and you felt like doing it, it could be done if the chief would direct you to do it, but the chief always had the consent of the arresting officer.

Answer, Yes, I never did one of my own." Were you asked that question and did you give that answer?

A. Yes I did.

Mr. Malandra: Your Honor, may I at this time respectfully suggest that the jury be warned that any statement given by Mrs. Naglee pertains only to Mrs. Naglee and not to the other two defendants.

The Court: All right, I think perhaps I have already given an explanation, but because the court feels that the question has considerable merit, the court will again charge you the law to be as follows.

These statements were taken from all of the evidence that I can consider now to have been presented long after the conspiracy was or the alleged conspiracy was complete. Obviously, therefore, they in view of the fact that they're not concerning acts done in the pursuance of the object of the alleged conspiracy, they're inadmissible as proof binding upon other people charged with the alleged crime. Now, in simple words that means this, where Mrs. Naglee, or any of the other witnesses, and by witness I mean any of the defendants, is confronted with various questions being asked them and various answers being given, the answer to those questions are only binding upon themselves, and they are not binding upon the other defendants in the [fol. 499] case. We went over the statement and attempted to simplify it by applying the various rules of evidence and the like pertinent to it, and the court made a lot of rulings and there is a lot of in here of course that will not be asked, and of course wouldn't be answered, but please keep in mind throughout the interrogation on all of these statements by any one of the defendants, that what they say is only binding upon themselves and their own personal individual statement and is not binding upon either of the other defendants in the case. Is that satisfactory?

Mr. Malandra: Yes sir.

The Court: Is there any objection, Prosecutor?

Mr. Aiken: No, Your Honor.

By Mr. Aiken:

Q. Now, Mrs. Naglee, when you would make these entries in the docket, in relation to the disorderly charges after you had changed a ticket, for drunken driving, to disorderly, when you made the entry, did you put the hearing date on a court night?

A. Did I put it?

Q. Yes, would you show your entry that the hearing on the disorderly conduct charge was held on a court night, a Wednesday night?

A. I presume I did.

Q. Did you do that in all cases, do you know?

Mr. Malandra: If you know, Mrs. Naglee, if you know.
[fol. 500] The Witness: Where I took care of them.

Q. Well, did you take care of the entry on Robert Franklin, page 25 criminal docket. Did you take care of that entry on the top entry, Mrs. Naglee?

A. Who is this supposed to be?

Q. Robert Franklin.

A. Well, it's not the top one.

Mr. Malandra: Next to the last, Mrs. Naglee.
The Witness: Yes I did.

Q. You took care of that one?

A. Yes.

Q. Now, the hearing date is shown as what?

A. 11-26-60.

Q. Now, I show you the complaint issued to Robert Franklin, marked S-17 and ask you what the return date is on that ticket?

A. November 30th.

Q. Now, which of those two dates would've been the hearing date?

A. Whichever would've been the Wednesday.

Q. Well, if I told you that November 30th, 1960, was a Wednesday, would that be right?

A. That would've been the hearing night.

Q. And you made the entry on Robert Franklin as appearing on November 26th, did you not?

A. Yes, paid 11-30-60.

Q. And that was four days before the 30th, wasn't it?

A. Yes.

Q. Or a Saturday night?

[fol. 501] A. Yes.

Q. The 30th was a Wednesday?

A. Yes.

Q. And to your knowledge, no hearing was ever held by the municipal court in Bellmawr on a Saturday night, was it?

A. No.

Q. I think that is all.

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[fol. 521] EDWARD VIRTUE, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Malandra:

Q. What is your official capacity in Bellmawr?

A. I am a detective.

Q. Now, Mr. Virtue, I'd like to ask you first whether or not there was an agreement between you and Chief Garrity and Helen Naglee to alter these tickets?

A. Definitely not.

Q. I would like to ask you whether or not you received any money at all from any of these tickets.

A. No sir.

Q. I'd like to ask you if you received any money of any kind from any of these tickets.

A. No sir.

Q. Now, you were the arresting officer, apparently, on all of these that are here in court today. I would like to start and take each one separately, so that we have a chronological order of these arrests. I want to take Robert Franklin. Do you remember arresting him?

A. Yes sir. Mr. Franklin was involved in an accident on West Browning Road. I responded to the call and Mr.

Franklin was arguing with the other driver that was involved in the accident. I talked to Mr. Franklin, I asked Mr. Franklin if he had been drinking. He said no, I'm not drinking, why. I said well, you appear to have had quite a few. He says not me, he says, I had maybe one to kill the pain in my mouth. I just come from a navy dentist [fol. 522] and he done a lot of work in my mouth. And, I said well, Mr. Franklin, will you come into headquarters with me while I run a drunkometer test on you and at that time he became very belligerent. I put Mr. Franklin in the car and I took him into headquarters.

Q. Did you write a ticket immediately or did you wait until after the examination to write a ticket?

A. I wrote the ticket immediately. That is when he really became belligerent.

Q. Speak up.

A. I said I wrote the ticket immediately. That is when he really became belligerent. We came into headquarters, I gave him the drunkometer test and I got a reading, I don't know whether it was around eight or nine hundreds of one per cent, which is insufficient for a conviction. The state requires fifteen hundreds of one per cent blood alcohol. I talked to Chief Garrity about this case and he checked with the navy hospital and he found out that the man was in there and that they had given him a sedative to kill the pain. He was also told that he wasn't supposed to touch anything to drink, so after speaking to the chief, I amended the complaint to 39:4-97 and I charged the man with disorderly conduct.

Q. Why did you amend that complaint and charge him with disorderly conduct?

A. Because I didn't, I had insufficient evidence to convict a man in court.

Q. Now, we'll take John Gregal, do you remember him?

A. Yes. Mr. Gregal was involved in an accident on West Browning Road also. He hit the back of a Borough truck. When I got there, Mr. Gregal was arguing with the truck driver and the truck driver said to me, he said I want him

locked up for drunken driving. I said are you going to sign [fol. 523] the complaint and he said yes, I will. So I gave him a summons for 39:4-50. We came into headquarters, and Doctor Cooperman examined him and Doctor Cooperman said that he was not drunk. After the truck driver heard that, he said well, I don't feel as if I want to go through with the complaint and I had no alternative but to amend the complaint.

Q. In other words, you had already made the original out?

A. That's correct.

Q. And did you get the advice or consent of the chief?

A. Yes, I spoke to the chief about it and the chief said if the driver didn't want to go through with it and the doctor said he wasn't drunk, to amend it.

Q. Now, we go to Linwood Finney, do you remember him?

A. Mr. Finney was a colored truck driver and he was stopped on the Black Horse Pike in a routine check. When I stopped Mr. Finney, he started hollering discrimination and giving me a tough time and I asked him to come to headquarters so that I could run a drunkometer test. Well, he consented to go along with the test, but he was belligerent the whole time. After I gave him a drunkometer test, I don't remember the reading, but I know that it was insufficient. Mr. Finney posted bail and he came to a hearing and if I remember correctly he was called, he was there and the judge forfeited his bail.

Q. The judge forfeited his bail?

A. Yes sir.

Q. All right now, we go to William Snyder. Do you remember that one?

A. Yes, Mr. Snyder was involved in an accident. He struck a pole on Browning Road. I asked Mr. Snyder [fol. 524] if he had been drinking and he said I had a couple, I took him in, I had him examined, and I don't remember why but I know the judge amended a complaint to 39:4-97 and he also found him guilty of careless driving. That was heard in court.

Q. You say in that case the Judge Teitelman made the change in court?

A. Yes sir.

Q. All right now, do you remember Phyllis Zippel?

A. Yes, I remember Phyllis Zippel. Phyllis Zippel was also stopped in a routine road check. We smelled alcohol on her breath and we brought her in and we had her examined by Doctor Cooperman after the examination, Doctor Cooperman proceeded to take her home. The next morning, before I went off, Mrs. Jean Paskel come in and asked for me and asked for Chief Garrity. She spoke to us and told us that Phyllis had come to see her and that she stated she was not drunk. Well, I explained the case to her, but Mrs. Paskel said well, the reason I'm here, I would like to know if you could give the girl a break. I asked her what she meant and she said she has two small children, her husband has left her, she has no money, she's being evicted from her home, I went to the chief and talked to the chief and the chief said under the circumstances, maybe it would be better to give her a break.

Q. All right now, to go to Robert Killian, do you remember Robert Killian?

A. Yes, I remember Mr. Killian. Mr. Killian was also stopped on a routine check and this was on a Sunday night. Mr. Killian, as soon as he was stopped, we stopped him due to the way that he was driving his motor vehicle, the erratic manner, and as soon as Mr. Killian seen me along side of the car, he started jumping up and down and [fol. 525] calling me a lot of names. The reason for that is that Mr. Killian had previous trouble with the police department over his wife. I took Mr. Killian into headquarters, I was unable to get a doctor. I didn't have any kits for the drunkometer and I had already wrote the ticket. So, I placed Mr. Killian in the county jail. Monday morning, I talked to Chief Garrity about this case and he told me well, you should know better, he said the man wasn't examined by a doctor, he wasn't examined by a drunkometer. How do you expect to get a conviction. You can't

prove the state's case, so I talked it over with him and he said well, under the circumstances, I think it would be better to amend the complaint and charge the man with careless driving.

Q. Now, Herbert Brining, do you remember arresting him?

A. Very well. Mr. Brining was also stopped on a routine check and he was given, yes he was examined by Dr. Cooperman. After the examination, he was taken home and I guess it was around nine o'clock the next morning, Mr. Brining come walking up with his wife and five or six little kids and Mrs. Brining started crying to the chief that he was a truck driver and if he—

Q. What was the report of Dr. Cooperman?

A. Dr. Cooperman said he was a border-line case.

Q. And—

A. And she asked the chief if we would give him a break and well, I agreed to it and the chief and I said it was all right to amend the complaint.

Q. But the doctor did give you a report that he was a border-line case?

A. Yes, Dr. Cooperman's report said it could go one way or the other.

[fol. 526] Q. All right. Now, we come in Scott. Do you remember Mr. Scott?

A. Mr. Scott was also stopped on a routine road check, due to the way he was operating his motor vehicle. I spoke to Mr. Scott and I could smell the alcohol on his breath. I brought Mr. Scott into headquarters and after issuing him a summons then he really blew his stack. He said look, I've had one bottle of beer, I am not drunk. Well, I said we'll soon find out. We'll go in and see the doctor. So, I radioed ahead and asked the doctor to come into headquarters. We went into headquarters, Dr. Cooperman took the man into the back room and he had him there for about fifteen or twenty minutes, and he come out and said to me he says Ed, I can't pronounce this man, and I said why, doctor, and he said well, he showed me a bottle of medicine,

he said he has a back injury and he is taking this for a sedative. He said now, it's possible that with one bottle of beer, that it would accelerate the alcohol with the medicine.

Q. Now, I ask you, Detective Virtue, did you at any time you and Chief Garrity or you and Helen Naglee ever sit down and plan in advance that you were going to help these people?

A. No sir.

Q. Did the three of you ever agree that you were going to do this thing?

A. No sir.

Q. When you had conversations concerning the circumstances of each case, you talked only with the chief, didn't you?

A. That's correct, he's my boss.

Q. Now, are you married?

A. Yes I am sir.

[fol. 527] Q. Do you have any children?

A. I have three sir. I have a daughter 15, I have a son 11, and I have a daughter 11 months.

Q. Now, I would like to ask you once again, Detective, did you at any time get any money from any of these tickets, personally?

A. Not one cent.

Q. That's all.

The Court: Supposing we take a recess.

(A short recess is taken.)

Cross examination.

By Mr. Aiken:

Q. Mr. Virtue, was it your practice in all drunken driving cases to issue a drunken driving ticket before you took them to police headquarters and had them examined?

A. Yes, we always issued a summons before taking them to headquarters because it had been brought out in court on several occasions, did you make it out before or after the doctor's examination or were you in doubt?

Q. But, at any rate, you always made them out before you took them in to have them examined?

A. Yes sir.

Q. Always?

A. Yes sir.

Q. Now, you mentioned you were a drunkometer operator?

A. Yes.

Q. Now, in connection with operating a drunkometer, [fol. 528] don't you make a written report of the findings of the drunkometer?

A. Yes.

Q. And did you do that in the cases that you mentioned that you had taken in drunkometer tests?

A. Yes.

Q. What happened to the report, where you did take a drunkometer reading?

A. Where they were insufficient, or not up to par, I just destroyed them.

Q. Did you destroy them before or after you changed the ticket?

A. At the same time.

Q. And did you do that with Chief Garrity's consent?

A. Yes sir.

Q. Now, did you say you ran a drunkometer on Robert A. Franklin.

A. Yes sir.

Q. Was he examined by Dr. Cooperman also?

A. Yes sir he was.

Q. Do you know what happened to Dr. Cooperman's report in that case?

A. I do not, sir.

Q. Did you change the ticket in that case?

A. I couldn't say whether I changed it or whether the chief took care of it.

Q. Can you tell by looking at the ticket?

A. Yes.

Q. Would you do that?

A. Yes sir. No sir, that is not my change.

Q. Do you know whose change it is?

A. No sir, I do not.

Q. Well, is it Chief Garrity's, if you know?

[fol. 529] A. I couldn't say, sir.

Q. Do you know when it was changed?

A. No sir, I do not.

Q. Was it changed in your presence?

A. I couldn't answer that, sir.

Q. What time of day or night did you issue that ticket?

A. This summons was issued on the 9th day of November, at 2:30 p. m., sir.

Q. Now, you say you didn't alter the ticket?

A. No sir.

Q. Did you call the hospital the next day about Mr. Franklin?

A. Yes I did, sir.

Q. And then did you talk to the chief after that, the next day?

A. I believe I did, sir.

Q. Was the ticket changed up to that point, do you know?

A. I don't believe so, sir.

Q. Now, you say you charged him with disorderly conduct?

A. Yes sir.

Q. When did you charge him with disorderly conduct?

A. Upon bringing him to the station I told him that there was a complaint signed for disorderly conduct.

Q. That's the same day that he was picked up and when you charged him with drunken driving?

A. That's correct, sir.

Q. And at that same time, did you also charge him with careless driving?

A. I couldn't say when it was changed to careless driving, sir, but the drunkometer shows that he was under the influence.

[fol. 530] Q. No, I am asking when, if ever, you charged him with careless driving.

A. After talking to the chief.

Q. And that was the next day?

A. I believe so.

Q. Can you remember whether that was a weekend or an ordinary week-day or what?

A. No sir, I couldn't tell by the summons, sir.

Q. Do you have the complaint you made against him for disorderly conduct?

A. No sir, I do not.

Q. Do you know where it is?

A. I do not, sir.

Q. Have you tried to find it?

A. I have not, sir.

Q. Do you know whether or not it is now in the records of the Bellmawr Municipal Court?

A. I believe it is, sir.

Q. Did you say that Mr. Franklin appeared in court on the disorderly conduct charge?

A. I did not, sir.

Q. Did he?

A. I don't recall, sir.

Q. Well, as a matter of fact you know he didn't, don't you?

A. Only from the time that I have heard here, sir.

Q. Well, if he appeared you would have testified against him, would you not?

A. I would've.

Q. And wouldn't you remember that?

A. I have been in court a lot of times, sir.

Q. Now, you say that you issued a complaint for drunken driving immediately upon stopping him on the road?

[fol. 531] A. Yes sir.

Q. Did you run a drunkometer on him?

A. On Mr. Gregal?

Q. Yes.

A. No, he was a doctor's examination.

Q. Now, did you make the change on that ticket?

A. It was done with my consent.

Q. Well now, look at the ticket and tell me if that is your change?

A. No sir, that is not my writing.

Q. This is S-18, that I have just shown the witness. Will you take a look at that, and at the change there to be sure whether that is your writing or not.

A. That is not my writing, sir.

Q. Do you recall being questioned by Mr. Kaplan on December the 5th?

A. Yes.

Q. What is the number of that ticket?

A. 5611, sir.

Q. Do you recall him showing you that ticket?

A. No sir.

Q. You don't?

A. No sir.

Q. Do you recall this question asked by Mr. Kaplan and this answer by you, on page 54.

The Court: Do you have that paragraph?

Mr. Malandra: Yes sir.

The Court: See, it would be more convenient for the court if when the Prosecutor or you refers to statements, if you let the court know that each of you have found it. [fol. 532] For example when he says what page, you say yes, you say I have it and then we can go ahead.

Mr. Aiken: Incidentally, Mr. Virtue, you recall that before you gave that statement to Mr. Kaplan you were put under oath?

A. Yes, I do sir.

Q. Do you remember hearing this question, and giving this answer to it. "Question, Number 5611, John Gregal, charged originally with drunken driving, changed to careless driving by writing '50' and putting in '97' and disposed of in the violations bureau for ten and five, which was received by Mrs. Naglee on a careless driving charge, and I ask you whether or not you made that alteration. Answer, That is my writing." Do you remember giving that answer?

A. No, I do not sir.

Q. Do you remember the following question and the following answer. "Question, Do you recall whether there was a disorderly conduct charge in this case of Gregal's? Answer, No sir, I do not." You remember giving that answer?

A. Possibly I did, sir. I don't remember.

Q. You don't remember admitting to Mr. Kaplan that you made the change on that ticket?

A. This is definitely not my writing, Mr. Prosecutor.

Q. Well now, you told Mr. Kaplan, didn't you, that that was your writing under oath?

A. At the time that Mr. Kaplan was speaking to me, Mr. Philip Large was there, Mr. Corbin was there, when I admitted to changing the ticket, I admitted that it was done [fol. 533] with my consent sir, but this is definitely not my handwriting, Prosecutor.

Q. Well, your answer was that is my writing, isn't it?

A. Well, then I misunderstood the question, sir.

Q. Now, do you know when that change was made on the Gregal ticket?

A. No, I do not, sir.

Q. Were you present when it was made?

A. I don't remember, sir.

Q. And you don't know whose writing it is?

A. No sir, I do not.

Q. And you don't know when you consented to the change?

A. I believe I consented to it the same day, due to the fact that the doctor said Mr. Gregal was not under the influence.

Q. Did you see the doctor's report?

A. I believe I did.

Q. Do you know what happened to that report?

A. I do not know.

Q. Now, I show you a ticket number 5537, relating to Linwood Finney, and ask you to look at the change on that ticket. Did you make that change?

A. No.

Q. Do you know who did?

A. I am not sure.

Q. Do you know when it was made?

A. I do not know.

Q. Didn't I understand you to say under direct examination that you made the change on that?

A. I don't remember, sir.

Q. Well, didn't you say that you ran the drunkometer [fol. 534] on Finney and found insufficient finding and then made the change?

A. Yes I did sir, but when I made that statement, it was to this extent, that knowing that I had insufficient evidence for a state case, I would go to Chief Garrity and by that meaning that I would ask him about changing the complaint. I didn't say that I had made this change. My summonses were turned in at the desk to the violations bureau.

Q. Well, do you know when the change was made?

A. No I do not, sir.

Q. When did you speak to Chief Garrity about making the change?

A. I believe the next day, Mr. Prosecutor.

Q. Is it possible that Mrs. Naglee made the change there?

Mr. Malandra: I object.

The Court: Sustained. It is probability under the law.

Q. Did you charge Finney with disorderly conduct?

A. Yes I did.

Q. You made out and signed the complaint?

A. Yes I did.

Q. Do you have it here?

A. No sir.

Q. Did you testify against Finney in court?

A. I could've.

Q. Did you?

A. I don't remember, sir.

Q. Well, didn't you say in relation to Finney under [fol. 535] direct examination that he didn't show up in court and that the judge forfeited the bail?

A. Yes I did, sir.

Q. Well then, you do remember?

A. Yes sir, I do.

Q. Now, in relation to William Snyder, did you make the change on his complaint?

A. I haven't seen the summons, sir.

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[fol. 554] EDWARD VIRTUE, having been previously sworn, resumes the stand.

Cross examination.

By Mr. Aiken:

Q. Now, Mr. Virtue, when we started to talk about the Snyder ticket yesterday, we adjourned. I think you had testified that the change on this ticket was made by Judge Teitelman and that is his handwriting, is that right?

A. Yes sir.

Q. Did you see him make that change?

A. Did I see the Judge make the change?

Q. Yes.

A. No sir.

Q. Well, how do you know he made it?

A. It was testified to in court by the judge, that it was his handwriting, sir.

Q. Well, do you recall him testifying that that was his handwriting on the back?

A. Yes.

Q. Yes, on the back, but not the change on the front, it doesn't look like it, does it?

A. No sir.

Q. No, it doesn't. And, you have no personal knowledge of who made the change on this ticket, is that right?

A. No sir.

[fol. 555] Q. Now, as to Phyllis Zippel, did you make the change on the Zippel ticket, do you want to look at it?

A. That's not my writing, sir.

Q. Do you know who made it?

A. I do not, sir.

Q. Did you authorize it?

A. I consented to it, sir.

Q.And to whom did you express your consent?

A. I talked to Chief Garrity.

Q. And that was after I think you said Mrs. Paskel came in the police station the next day?

A. That's correct, sir.

Q. And was that the day the money was paid over?

A. I don't remember, sir.

Q. You don't remember seeing any money pass that day?

A. I do not, sir.

Q. Did you tell either Mr. Kaplan or Mr. Rigg that Mrs. Paskel had come in the police station the next day about Phyllis Zippel?

A. I told Mr. Kaplan a lot of things I don't remember, Mr. Prosecutor. I don't remember exactly what I told him.

Q. Page 36, do you remember being asked by Mr. Kaplan this question and giving this answer in relation to Mrs. Zippel, "Question, Are you familiar with the case? Answer, Vaguely."

A. I could have possibly said that, yes sir.

Q. Well, you did say there's no question about that is there?

A. I don't remember, sir.

Q. Do you remember this question and answer, "Question, Do you know whether Mrs. Zippel was examined for drunken driving? Answer, I can tell you she was. Question, Do you remember the nature of the report made? [fol. 556] Answer, I believe she was found to be under the influence." Do you remember that?

A. I don't remember saying it, but if it's in my deposition, yes sir.

Q. You have no recollection of saying this to Mr. Kaplan?

A. As I explained before, Prosecutor, I had a lot of men asking me questions that day.

Q. Yes. "Question, The doctor pronounced her unfit to drive, in other words? Answer, Yes." Do you remember that?

A. I could've said it, yes.

Q. "Question, And were you asked would you consent to the change, do you remember? And the answer is I believe it was a hardship case." Do you remember that?

A. I remember Mrs. Paskel telling me it was a hardship case and she explained the case to me.

Q. You remember that question and answer though?

A. No sir.

The Court: You see, Prosecutor, I think he has given an answer that is understandable. Part of his answer is that he doesn't specifically remember individual questions, and in all probability because of the lapse of time, but then he had added on to that if it is in there, I must have said it. Now, I think that is a sensible explanation of the statement. I mean let us assume that six weeks ago, somebody took a statement from me and asked me do you remember this particular question, obviously I doubt whether I would or not, but if it's in the sworn statement, and it was taken down in all probability I said it, but I couldn't remember the particular remark. That is the nature of your answer, [fol. 557] isn't it, if it was in there, in all probability that question was asked and you gave that answer.

The Witness: But I don't remember it, yes sir.

Q. "Question, I would like to get this clear, do you recall being asked to make the change and give your consent? And your answer was I had to be consulted, yes." Do you remember that?

A. No sir.

Q. "Question, Do you remember who asked you and your answer was no sir, I do not." Do you remember that?

A. No sir.

The Court: Let me get one thing straight, he just said no sir, but do I understand your first answer holds, that it is in there, in all probability that question was asked and that answer was given.

The Witness: That is my deposition, Your Honor. It's in there, but I don't remember the exact question.

The Court: In other words, what I am saying is that that same answer in reference to if it is in there, in all probability it was as it was, however you cannot remember the questions and answers specifically.

The Witness: That is correct.

The Court: Would that hold to all of the questions?

The Witness: Through all of the questioning he as asking, yes sir.

[fol. 558] Q. "Question, Now, the receipt shows a conviction of careless driving charges and you gave your consent because there was a hardship case and your answer was yes, I believe it was. Question, And this is in line with the policy or practice that developed the tickets other than drunken driving, you did whatever you could to bring them into reasonable bounds according to your judgment and your answer was yes, may I see that summons sir? Question, Was this change made the same night she was arrested and your answer was I couldn't answer that. Question, Do you remember any details about this case, your answer no." Do you remember hearing those questions and giving those answers?

A. Yes sir.

Q. Now, did you have any conversations with an Officer Riley of the Westville police about that case?

A. No sir.

Q. Did you talk to Mrs. Zippel herself about this matter?

A. No sir.

Q. She didn't come in with Mrs. Paskel the day you were talking about it?

A. I wasn't there, sir.

Q. Didn't you say that Mrs. Paskel came in the next day while you were there?

A. Mrs. Paskel came in at a later date and paid the chief. Mrs. Paskel came in the following morning and spoke to the chief and I, but when she came in with Mrs. Zippel, I wasn't there when she come in to pay the fine.

Q. All right, but you did talk to Mrs. Paskel about it?

A. In headquarters, yes sir.

Q. That was the day after?

A. Yes sir.

[fol. 559] Q. And was there any conversations about how much Mrs. Zippel would have to pay?

A. No sir. I have no authority for that. I have no authority to state what the fine would be.

Q. Well, you didn't hear the chief saying anything about how much she would have to pay?

A. No sir.

Q. Now, you said that in relation to Robert Killian, you arrested him on the road, is that right?

A. That's correct sir.

Q. For drunken driving?

A. Yes sir.

Q. And you couldn't find a doctor?

A. Yes sir.

Q. So you put him in the county jail?

A. Correct sir.

Q. And you didn't run a drunkometer on him?

A. We had no kits for the drunkometer, Mr. Prosecutor.

Q. Do you know when Mr. Killian was released from the county jail on bail?

A. I do not, sir.

Q. Well, you said that the next day I think it was you and chief decided the charge ought to be changed, is that right?

A. That's right.

Q. Do you know whether Mr. Killian was still in jail at that time?

A. I don't know whether he was released prior to that or after that.

Q. Do you know whether or not bail had been posted for him when you and the chief decided to make the change?

A. No, I did not, sir.

[fol. 560] Q. Did you talk to Mr. Killian at any time after you got out of jail?

A. No I did not.

Q. Do you know who made the change on this ticket?

A. That is not my writing, sir.

Q. Do you know who made it?

A. I do not sir.

Q. But it was made with your consent.

A. With my consent, yes.

Q. Did you consent to changing that charge to 39:4-85?

A. I consented to bringing it down.

Q. Well, why is that changed to 39:4-85 instead of 97 which is careless driving?

A. I don't recall the surrounding of that, but there must have been a reason for it, Mr. Prosecutor.

Q. Anything about what Mr. Killian was doing when you picked him up, except that you picked him up in a routine check, isn't that what you said?

A. A routine check, I would say it's due to the way he was operating his motor vehicle. It could possibly have been he was driving on the shoulder, gotten in and out of traffic, that I can't answer.

Q. You don't recall that?

A. No sir.

Q. But you do remember that you gave him a ticket on the scene for drunken driving?

A. Yes, I do.

Q. I think you pronounced Mr. Brining was pronounced under the influence by Dr. Cooperman, wasn't he?

A. Yes. He was a borderline case. He wasn't under the influence, he was a borderline case.

Q. But at any rate, when the Doctor said that, you didn't change the charge at that time, did you?

[fol. 561] A. No sir.

Q. You changed it the next day?

A. After speaking to my Chief, yes.

Q. Did you talk to Brining the next day?

A. Yes, I talked to Brining and Chief Garrity.

Q. And did you make the change in the ticket?

A. No, sir. I told you before, Mr. Prosecutor, When I get through making the summons out they are put in the desk for the violations clerk. I don't see them after that.

Q. Do you know who made the change on this ticket? Can you tell by looking at it?

A. That is not my writing sir.

Q. Well, can you tell who made it?

A. I don't know sir.

Q. You can't tell by looking at it?

A. No.

Q. Did you talk to Brining about how much he would have to pay?

A. I did not sir.

Q. Now, in relation to Mr. Scott, Mr. Virtue, you picked him up in a routine check also, is that right?

A. That is right.

Q. And when did you authorize the change in that ticket?

A. I spoke to Chief Garrity.

Q. Do you remember when it was? In relation to when you picked the man up?

A. Usually we always see the Chief when we were through with our patrols.

Q. Well, do you remember specifically when you—

A. Specifically, I don't remember when.

Q. But at any rate you authorized the change?

A. Consented.

[fol. 562] Q. And did you talk with Mr. Scott after he was released on the night or day he was picked up?

A. I did not.

Q. At no time?

A. No.

Q. Do you remember Mr. Scott testifying that you came over to his place of employment?

A. You asked me if it was the day after Mr. Prosecutor, and I said No, sir. I talked to Mr. Scott at a later date to tell him that the envelope was at the Borough Hall for him, yes sir.

Q. And when was that?

A. I don't remember exactly how long it was, sir. Maybe a week, maybe two weeks, I don't know.

Q. Well, what was it you said to Mr. Scott when you talked to him?

A. I told him about the envelope there, the exact words I don't remember. It could have been in a line that the balance of his bail was waiting for him at headquarters and he could pick it up any time.

Q. Do you recall whether Mr. Scott appeared in Court or not?

A. I don't remember Mr. Prosecutor, I told you I have a lot of cases.

Q. Well, if he appeared, his bail would have been forfeited, wouldn't it have been, Mr. Virtue?

A. That is correct.

Q. So that there would not have been any reason for returning the bail to him, isn't that right?

A. I'm not familiar with that end of it sir. I am the arresting officer and that is all.

Q. Well don't you know that that is right?

A. I believe it is the procedure, but I can't say for sure.

[fol. 563] Q. Did you tell him how much money was waiting for him?

A. I did not, no sir, I just told him there was an envelope with the balance of his money waiting for him.

Q. Was there any particular reason why you went to his place of employment instead of calling on the phone or writing him or something like that?

A. Very easy, sir. Prior to being a Police Officer, I worked in Philadelphia exactly one block from where Mr. Scott's place was, and I went over there to visit some of my friends and the chief requested that I stop in and tell Mr. Scott.

Q. Mr. Virtue, did you tell any of these drivers that they didn't have to appear in Court on either a drunken driving charge or a disorderly conduct charge?

A. No.

Q. In those cases, Mr. Virtue, where you mentioned you ran a Drunkometer on the other drivers, where the Doctor also examined, was there any particular reason for giving both types of examination?

A. Yes, we were having a little problem in the Courts with the Drunkometer and the Chief advised us that it would be much better to have a Drunkometer test in conjunction with an examination by a Doctor.

Q. But you didn't always do that?

A. If we could get a doctor, we would. If we didn't we just—

Q. Well, there were cases where you used the doctor but not the drunkometer.

A. Yes, on those occasions that is when we had run out of kits.

Q. When did you run out of kits, do you recall?

A. Well, we only order them five and ten at a time sir. [fol. 564] Q. But in none of the cases in which you ran a drunkometer test, do we have any record of that test.

A. No sir.

Q. Now, did you ever go to Mrs. Naglee for any reason in relation to the money that she testified that she kept in a drawer?

A. No sir.

Q. Did you know she kept it there?

A. I know she had money in the drawer.

Q. And did you know where that money came from?

A. Yes.

Q. Did you know that the money came from the excess money paid by these drivers?

A. Yes sir.

Q. That's all.

Mr. Malandra: No re-direct.

The Court: Thank you, you may step down.

* * * * * * *

[fol. 581] Edward J. Garrity, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Malandra:

Q. You are the Chief of Police in Bellmawr?

A. Yes.

[fol. 582] Q. Are you married?

A. Yes.

Q. Did you have any children?

A. One.

Q. How long have you been on the police force?

A. Fifteen years.

Q. How long have you been chief?

A. Ten.

Q. Now Chief, did you at any time attend the state police training school?

A. Yes I did.

Q. When was that?

A. About 1952, '53.

Q. Did you also enter the school of Pennsylvania Institute of Criminology?

A. Yes I did.

Q. When was that?

A. 1948, around 1948.

Q. Did you attend the New York Institute?

A. Yes I did.

Q. When was that?

A. In 1961.

Q. Did you take a course with the F. B. I.?

A. Yes I did.

Q. Did you attend a finger-print course with the F. B. I. in Newark?

A. Yes I did.

Q. When was that?

A. 1950, '51.

Q. Did you attend any other university?

A. I went to Western Reserve University in Cleveland, Ohio.

Q. When was that?

[fol. 583] A. Around 1958?

Q. Any other schools?

A. Temple University in Pennsylvania.

Q. Did you attend Rutgers University for a special course?

A. Yes I did.

Q. When was that?

A. I would say around '57.

Q. Now, I hear you attend a school in Washington, D. C., Treasury Department?

A. Yes I did.

Q. What was it about?

A. Narcotics.

Q. Now, in any of these courses that you took, chief, can you tell us what they pertain to?

A. Well, the specific course in Western Reserve University in Cleveland was the alcohol and the effect on the human body and brain.

Q. And the other courses in the other schools?

A. New York University was on instrument deception, that's the lie detector polygraph.

Q. Now chief I want to ask you at the outset, was there any arrangement, any agreement, any meeting of the minds between you and Mrs. Naglee and Ed Virtue for the purpose of altering tickets?

A. No, there was not.

Q. Did you at any time conspire with Ed Virtue to fix any tickets or alter a ticket?

A. No sir.

Q. Did you conspire with Helen Naglee to alter a ticket?

A. No sir.

Q. Now, there's some talk about money that was in this [fol. 584] case. Did you at any time receive any money for your personal gain?

A. No sir, I did not.

Q. Did you at any time receive any emolument for your personal gain?

A. No sir.

Q. Now, as Chief of Police in Bellmawr, what exactly are your duties?

A. The supervising of the police department and in general acting as a role so to speak as a prosecutor in the fact that during the period we had no prosecutor.

Q. Am I to understand that you were the person that made all of the decisions at the police department?

A. Yes, I did.

Q. You were the chief administrator?

A. Yes.

Q. And in those days, you did not have a prosecutor?

A. No sir.

Q. When did you first get a prosecutor?

A. This year, 1963.

Q. Now, there is a great deal of testimony, chief, about these tickets that have been altered. Is there any question in your mind that these alterations were made for personal gain?

A. No, they were not.

Q. Now, Ed Virtue has testified that where he had to make a decision, he came to you to talk over the decision, is that so?

A. For advice, yes sir.

Q. And then the decision would be made?

A. Yes.

Q. Now, in six of these overt acts, he testified that the people were not intoxicated and therefore couldn't prove

[fol. 585] intoxication and came to you and gave you the facts and then the decision was made to charge him with those offenses that he could prove, is that so?

A. That is right, sir.

Q. Now, there was some money involved in some of these cases. Now, in the case of Robert Franklin, do you recall that case?

A. Yes sir.

Q. Now, will you tell us about that Robert Franklin case?

A. Robert Franklin, from what I can remember, was involved in an accident and he was brought in to headquarters and I believe that there was a drunkometer test run in conjunction with the doctor and then Mr. Franklin stated that he had had a tooth pulled, extracted, with several stitches. I called the naval hospital over in Philadelphia to get a verification of this, and they told me over the phone that he had from what I can remember, I think they called back the next morning or the following morning, and stated that he had this tooth extracted and had received a sedative or something to take the pain.

Q. All right now, in this matter he was subsequently charged with careless driving and with disorderly conduct?

A. Yes, the disorderly conduct arose out of the fact that he became abusive in the station or belligerent to the fact that drawing inference that he was drunk.

Q. Now, were you in court, did you hear Robert Franklin testify that there was some money from the bail money left over after his fine was paid?

A. Yes, Robert Franklin.

Q. Yes.

A. Yes.

Q. Now, what did he do with that left over money, did you talk to him about it?

[fol. 586] A. He came in the station and we had, I didn't remember, but he brought it to my attention that we had had services rendered to him prior to this here accident, that was something to do with a hospital bed or something,

for some member of his family and he stated at that time to keep the money and for any special equipment that could help somebody else.

Q. Well, didn't he on another occasion give donations to the Bellmawr fund?

A. Prior to this?

Q. Yes.

A. Yes he did.

Q. Now, you didn't alter this ticket for him to get the balance of that money, did you?

A. No, we talked about this afterward.

Q. All right now, how about John Gregal in the John Gregal matter, I think we've got a great deal of testimony about each one of these matters. Did you go over the facts with Ed Virtue before the change was made?

A. Yes I did.

Q. Now, let me ask you something, chief, why was it necessary?

A. Well, John Gregal was involved in a minor accident, I think he run into the rear of either the Borough truck or one belonging to Mutual Housing, within the Borough there anyway, and at that time the driver of the truck insisted that he be examined to determine sobriety.

Q. Now, chief, is the policy of the police department down in Bellmawr where they suspect a man to be driving under the influence of alcohol that they give a ticket immediately on the spot?

A. Yes sir, that is the procedure because of the court acceptance when we go to court in the case for prosecution, [fol. 587] the defense attorney always raises a question as to whether the officer made the determination before or after the examination.

Q. So as a general rule a ticket is always given out immediately.

A. Yes.

Q. Now, is that the reason that you afterwards, when you couldn't prove that there was under the influence of alcohol, that you had to alter the ticket?

Mr. Aiken: Your Honor, it's leading.

The Court: He knows the answer, I think we can save a little bit of time. Go ahead, take maybe five questions and bring out the same point. I don't think this is harmful to the state.

A. Would you repeat that please?

(Reporter reads question to witness.)

A. Yes sir.

Q. In other words, if a ticket had been given to an individual for drunken driving, and then you found out afterwards through the drunkometer or the doctor that he was not intoxicated, you were more or less stuck with that ticket, weren't you?

A. That's right, sir.

Q. And then when you go over the facts with Ed Virtue and then charge the man with the offense that you can prove, is that right?

A. Yes sir.

Q. Now, there was some money with John Gregal, the [fol. 588] money left over there after he put up bail and after the charge had been made. Did you ask him for that money?

A. No, John Gregal came to the police station with his father and in the station there where my office is, we have a basic laboratory set up with different types of instruments and while we were in there talking about him and he asked for a couple demonstrations and I showed him a few of the things that they more or less had seen on television, they said that's the first time they had ever seen them, such as a polygraph and a few other things.

Q. Now, over the years chief, have there been pieces of equipment donated to the department?

A. Yes.

Q. Now, can you name me some of the people that donated things to you?

A. Well, Benjamin Miles, who was with the alcohol bev-

erage association, donated a W. B. and W. lie detector that records electro-dermal responses and then later on I had a polygraph detector donated to the department, for services rendered that would measure the respiratory and blood pressure and also a graph on that could be read.

Q. Now, this iron lung was donated to the police department, was it not?

A. Between the police and fire department.

Q. Now, let's go to Linwood Finney. There was some money left over from that. You tell me. Did you ask Linwood Finney for any of this money?

A. Well, I sent Detective Virtue. Linwood Finney was from Penns Grove, New Jersey, and I sent Detective Virtue down there several times and he had moved and I don't recall it was six to eight weeks, maybe about two months later, and on account of him being a truck driver, we got in touch with the Union and I believe I spoke to a John [fol. 589] Greely and explained what I wanted him for. He thought at first he was in trouble. When I told him what it was, he said he would speak to Linwood. I called him back in a few days and he said to keep the money and put it in the police fund. I told him we hadn't any, and he said "Well, whatever purpose you want to use it for."

Q. Did you personally keep any of the money?

A. No sir.

Q. Did Helen Naglee keep any of the money?

A. No.

Q. Did Ed Virtue?

A. No, he did not.

Q. Now, in the William Snyder case, there was some money left over in that, as I understand it. All the money you were talking about is four hundred thirty dollars, is that right?

A. Around that, sir.

Q. Now, in the Snyder case, there was some money left over there. Did you offer to return the money to him?

A. Mr. Snyder came down to the police station, as I remember, he was working shift work, a deck hand on a boat

and he came down to the police station to see me and we got talking and at that time the car came in they had been on an emergency case and they came in and started to clean up the resuscitator, and removing the mucus and stuff that was in it and he never seen a machine like that and I explained to him and I showed him how it would breathe for a patient and he said that's rather expensive, isn't it, and I said yes, well, we got some of these things through donations and as we continued to talk, he said that if you use it to help the public or people in Bellmawr, to keep that money, he didn't want it.

Q. He made a donation to you?

[fol. 590] A. Yes, he did.

Q. Now, Phyllis M. Zippel, was there any money in that left over?

A. No sir, there was none.

Q. There she paid fifteen dollars fine, Mrs. Paskel paid fifteen dollars for her, is that the total sum of the money involved?

A. Yes sir.

Q. Now, in Herbert Brining, in Herbert Brining ticket, was there any money left over with that?

A. No sir, I think he was out of work at the time and he even had problems raising fifteen dollars, whatever it was, we had to give him time.

Q. Now, the last one is the Scott matter. Now, that is the one where you had the money waiting for him, Mr. Scott, is that right?

A. Yes, Mr. Scott, it was a fellow who I don't recall whether he had a back injury or something, but he was examined also on the drunkometer and he thought that by being examined, he was being taken over and he was rather belligerent, I imagine to Officer Virtue, but when he came back, I don't know whether it was the following day or evening, I explained to him that the purpose of the drunkometer being a scientific instrument was as much to prove a person whether they were guilty as whether they were innocent and it could work in his favor, which it did.

Q. There was no left over money there?

A. No sir.

Q. That money was in an envelope waiting for him to come and get it?

A. Yes sir.

Q. I ask you, chief, were these changes made in the ordinary course of business, this was done in the regular [fol. 591] course of business, the ticket was given out, he was examined, if you couldn't prove drunken driving, I am talking about a specific incident now, Scott, you would then alter the ticket, is that so?

A. Yes sir.

Q. Was there any secret with this?

A. No sir.

Q. Did you do it in the dark anywhere or did you do it out in the open?

A. It was done in the open. It was easy to see that the tickets were altered. There was no deception there.

Q. That's all.

Cross examination.

By Mr. Aiken:

Q. Chief, you said Mr. Franklin made a donation?

A. Yes sir.

Q. What did he donate to and how much?

A. I believe it was around fifty dollars, Prosecutor, I'm not sure.

Q. What did he donate to?

A. To the ambulance.

The Court: Now, ladies and gentlemen of the jury, we'll take a short recess. I think what the Prosecutor wants to do in order to try to save a little time, is to line up some of the evidential exhibits here so that he perhaps may put his questions more pointedly to the issues that he has in his mind interrogating the chief on, so we'll have a short recess. Again, if you don't want to climb up those [fol. 592] steps, you can use the time out here in the corridor. Spectators remain seated until the jury leaves.

Now Chief, do you want to step down a moment, I believe there are two or three more character witnesses.

(A short recess is taken.)

MARTIN SEGAL, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Malandra:

Q. Where do you live?
A. 3252 Baird Boulevard, Camden, New Jersey.
Q. Do you hold an official position in Camden County?
A. Yes sir, I am the Sheriff of Camden County.
Q. Do you know Chief Garrity?
A. Yes I do.
Q. Do you know other people who know Chief Garrity?
A. Yes I do.
Q. What is his reputation for truth and honesty?
A. My dealings with the chief have been excellent.
Q. That's all.

Mr. Aiken: No questions.

(Witness excused.)

[fol. 593] CHIEF RALPH W. WALTER, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Malandra:

Q. You are the Chief of Police where?
A. Haddon Heights, New Jersey.
Q. Do you know Chief Garrity?
A. I do, sir.
Q. Do you know Helen Naglee?
A. Yes sir.
Q. Ed Virtue?

A. I do, sir.
Q. Do you know other people that know them?
A. I do.
Q. What is their reputation as to truth and honesty?
A. It is above reproach, sir.
Q. Thank you, sir.

Mr. Aiken: No questions.

(Witness excused.)

[fol. 594] A. Morton Shapiro, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Malandra:

Q. Mr. Shapiro, you are a member of the bar of Camden County?
A. I am.
Q. Do you hold any other official position?
A. I was former legal assistant to the City of Camden and presently treasurer of the South Jersey Port Commission.
Q. And do you know Chief Garrity?
A. I do.
Q. Helen Naglee?
A. Yes.
Q. Ed Virtue?
A. Yes.
Q. Do you know other people that know them?
A. I do.
Q. What is their reputation for truth and honesty?
A. Excellent.

Mr. Aiken: No questions.

(Witness excused.)

[fol. 595] The Court: Chief Garrity, you may resume the stand. You have already been sworn.

Cross examination.

By Mr. Aiken:

Q. Now, chief, you said that Mr. Franklin donated fifty dollars to the ambulance fund?

A. Yes.

Q. He paid and got a receipt for, as I understand it for a hundred and ninety dollars, isn't that right?

Mr. Malandra: If you know, chief.

A. I don't know, I didn't see it.

Q. Well I show you a little white slip attached to S-17 and ask you if that isn't a receipt that was given to Mr. Franklin?

A. Yes it is.

Q. And you signed it, didn't you?

A. Yes.

Q. Now, as I understand it, about a hundred ninety dollars, a hundred five dollars was attributed to the so-called disorderly conduct charge, wasn't it?

A. As far as I know sir, from what I remember.

Q. Well, haven't you examined the court records in relation to this matter?

The Court: Well, you have them there, Prosecutor. You have it there to show what the fines are and everything. Give them to him. They are in evidence. He has a [fol. 596] right to look at them, and of course, to speed this up a little, give it to them, whatever they are.

Q. I call your attention to S-5 in the next to the last entry, will you tell me how much was attributed to the so-called disorderly conduct charge?

A. A hundred dollars and five dollars court cost.

Q. And I show you S-4 and call your attention to the fourth entry from the top and how much was attributed to the so-called careless driving charge?

A. Ten dollars and five dollars, fifteen altogether.

Q. Then that is a hundred twenty dollars, is it?

A. Yes.

Q. And if he contributed fifty dollars to the ambulance fund, that makes it a hundred and seventy dollars.

A. Yes.

Q. And he paid a hundred ninety dollars, what happened to the other twenty dollars?

A. It was paid to the doctor.

Q. Incidentally, was the doctor paid in the Phyllis Zippel case?

A. As far as I know, I would say yes, but I am not sure. I couldn't answer that.

Q. Well, if she paid only fifteen dollars, chief, where did the twenty dollars come from?

A. What twenty dollars, sir?

Q. The twenty dollars that went to the doctor.

A. Prosecutor, are you talking about Franklin now or Zippel?

Q. Zippel.

A. Well, you didn't mention that twenty dollars before, was that more than twenty dollars or was that paid?

[fol. 597] Q. No, as I recall your testimony was that Phyllis Zippel through Mrs.—

The Court: The testimony was the only thing that was paid down there by Mrs. Zippel was fifteen and five, when Paskel or somebody came in and paid it. Do you know whether or not Dr. Cooperman was paid. I understand the testimony further in the matter was that he even took her home. Did you pay him out of the money that you got?

The Witness: I don't recall paying him.

Q. You don't know where that twenty dollars came from?

The Court: He doesn't know that. He doesn't even know if he's paid it. He took the woman home, maybe he didn't even want anything, maybe the woman paid him, I mean

let's not go into foolishness. Let's proceed with the case and take the testimony as it is. The testimony was the doctor took her home. Maybe he did all the examining for nothing when he took her home. She had a husband that deserted her and three or four kids and some other things, let's go on.

Q. Now, did you testify that Gregal made a donation?

A. When Gregal and his father came down to the station, yes they did.

Q. And how much was that?

A. I don't recall the exact amount.

Q. Did you keep any track of these donations, chief?

A. No, other than the receipts that you have, Prosecutor, that I turned over to the attorney general.

Q. Well, those are bail receipts, aren't they?

[fol. 598] A. No, Prosecutor. I turned over receipts for equipment that we had purchased.

Q. You mean the white receipt you just looked at in the Franklin case is not a bail receipt?

A. No, Prosecutor, equipment that we purchased, I turned over the bills marked paid to the Attorney General who I assumed turned them into the Prosecutor's office.

Q. Well, that may be, but will you look at that receipt, isn't that a bail receipt?

A. Yes.

Q. But you didn't make a record of the so-called donations, did you?

A. Not an accurate record.

Q. Well, did you make any record?

A. Prosecutor, you have receipts from laboratories and places like that, where we purchased equipment.

Q. Yes, that's true, but I don't have a list of the so-called donations. Do you have a list?

A. No, I didn't keep no particular list.

Q. You didn't make a notation anywhere of these donations?

The Court: Let's get this straightened out now. What he is saying to you, as I understand it, is this. He said there

were certain amounts of money turned over. Then when the Attorney General moved in on the case and investigated, he acted for that reason, not by a list that he gave him by saying all right, there was so much left from case A, what we did with case A, we bought certain equipment as the property of the police department of Runnemede, now is that what it is. You made no specific list, but you did give him an account in your own opinion for the money that was left over by showing him receipts and stuff that [fol. 599] you had purchased with the money that was given to you or donated and whatever else you wanted to call it.

The Witness: That's right.

The Court: All right, let's go.

By Mr. Aiken:

Q. But you don't know, do you chief, where this money, the Gregal money that was supposed to have been donated went for, do you?

A. No, not offhand.

Q. And Finney made a donation too?

A. After we had tried to contact him, as I stated to you, yes he made a donation, yes.

Q. Do you know how much that was?

A. No, I don't recall offhand.

Q. And Snyder made a donation?

A. Yes, he did.

Q. Do you recall how much that was?

A. Snyder, as I recall, was around a hundred dollars.

Q. Do you recall whether or not Snyder had any difficulty raising the money that he had paid in connection with this matter?

A. I don't recall.

Q. And did Scott make a donation?

A. You have Scott's envelope, Prosecutor.

Q. Well, did he make a donation?

A. Scott never came back with his receipt.

Q. Chief, did you ever tell Mr. Rigg that these people were making donations?

[fol. 600] A. Did I ever tell Mr. Rigg, I showed Mr. Rigg some of the equipment.

Q. Did you ever tell him that these people were making donations of this excess money?

A. What I recall, I think I did, yes.

Q. Do you recall in connection with which case or cases?

A. No I don't.

Q. Did you tell Mr. Kaplan?

A. Yes, it's in the deposition there.

Q. I don't want to ask you to do it now, chief, but after we recess today, would you be kind enough to look in the deposition and show me where that is. Will you do that for me?

A. Prosecutor, from what I remember, that night—

The Court: Objection sustained. You don't have to. He's already on three or four different occasions, and I don't think this is the way to do it, I mean we're playing footsie with cases, where we could hit the points by directing them, if you have the thing, show it to him and say what is this question asked, what is this answer given. Now, in the first place, we are not going to go in it because if it was in there all of that has been ruled out by me as a legal proposition to which you agreed. And you and Mr. Malandra spent considerable time and this jury wasn't even here for a day or a day and a half while we were milling out all of those points, so the law is not going to be broken now while I am sitting here permitting it to be brought into the case, matters that have already been ruled upon legally and what you agreed to do. Don't bother looking at that, the explanation has already been given to you and if you have anything, hit him with it directly, he has said that he told Mr. Kaplan, and he told the other one there, or [fol. 601] showed him what the money was used for, called it a receipt, called it anything, I call it an explanation that shows what the money was used for. The implication is in

this indictment, and I have already ruled upon that as a matter of law, that he pocketed the money and there is no proof in this case that any of these pocketed five cents and you have already rested your case for the state. Let's try the case, let's prosecute, not persecute. Proceed. You have the information, confront him with it. You have the right to lead him under the rules of evidence. You have a right to do it any way you want. Bring the case on, no wonder we've been wasting so much time with the case. May I say, ladies and gentlemen of the jury, I said I would do my utmost to have you out of here by tomorrow, but I am afraid you are going to have to work Monday, as I appraise the situation. Now, let us proceed. You have the information, confront him with it. Ask him if he did it, ask him if he didn't do it, let's get on with the case.

By Mr. Aiken:

Q. In connection with the Scott matter, do you recall how much Scott paid?

A. No sir, I don't offhand.

The Court: Do you have the evidence here?

Mr. Aiken: Yes, Your Honor.

The Court: Give it to him. Give him the papers and everything else to show what Scott paid and what he didn't pay and what is retained and everything else. You have [fol. 602] already entered it into evidence, and he has a perfect right to look at it. Will you give him the evidence, please?

The Witness: This is sealed.

The Court: Well, there's something else besides that, isn't there some kind of subpoenas or something else in reference to the Scott case. We know there is eighty-five dollars in that package, but that hasn't answered the question. He is discussing what did Scott pay, he paid more than the eighty-five dollars, didn't he?

The Witness: Yes, he did.

The Court: Well then, give him the other thing. What is the use of putting the stuff in evidence if you're not going to use it?

By Mr. Aiken:

Q. I'd like to ask him the question about the contents of the envelope, Your Honor.

The Court: Well, go ahead and ask him. Ask him if there is eighty-five dollars in the envelope, it's already been counted, in fact I warned the clerk to be especially careful so that the eighty-five dollars wouldn't be lost. I don't think there is any secret about what was in the envelope, there is eighty-five dollars, or there should be unless somebody took it out.

Q. Will you open that envelope, chief. Now, there is an envelope in there, isn't there with some of your writing on it?

[fol. 603] A. Yes sir.

Q. And the addition on the back, I think there is Mrs. Naglee's?

A. That resembles her writing, yes.

The Court: As a practical matter, the jury will ignore any reference to Mrs. Naglee in this case because it is not binding upon Mrs. Naglee. It is only binding upon the chief. I have already instructed you upon that three or four times. Anything on the back that purports to be Mrs. Naglee's is not binding upon her if she says so. Anything in reference to this is only binding upon him. Proceed.

Q. Does that help you in answering the question as to how much Mr. Scott paid?

A. Well, you want me to read it down, Prosecutor, what he has paid or how it was paid?

The Court: Go ahead, yes, read it in.

The Witness: Careless driving, ten and five, fifteen dollars, total, disorderly conduct, one hundred five dollars,

total, that is five dollars court costs, the doctor twenty dollars, a total of a hundred and thirty dollars and there is a balance of eighty-five dollars here in the envelope.

Q. Now, did you hear Mr. Scott testify that other day?

A. Yes sir, I heard Mr. Scott testify.

Q. Didn't he testify that he paid a total of two hundred fifty dollars?

A. Well, I don't recall exactly what he testified that he paid. The prosecutor we had asked Mr. Scott to stop over [fol. 604] with the receipt of what he did pay, and I think he said he didn't have it or couldn't find it.

Q. Well, if he paid two hundred fifty dollars, then there is twenty-five dollars missing, isn't there?

A. I don't know whether he did or not, I asked him to stop over with the receipt.

The Court: There is anything that shows that payment to the doctor.

The Witness: Just on the envelope here, Your Honor, it says twenty dollars paid doctor.

The Court: Is that added up and there is a total figure?

The Witness: Yes, a hundred thirty dollars.

The Court: All right, then there is money left there for Scott, that's eighty-five dollars, is that right?

The Witness: Yes, Your Honor.

The Court: All right, well, will your original receipt show what Scott paid that is in evidence?

Mr. Aiken: The original receipt is not in evidence, Your Honor, the only receipt in evidence of Scott is this pink one.

The Court: Show him that, maybe it'll give him the answer, two hundred fifty dollars, eighty dollars, whatever it was, what does that show?

[fol. 605] The Witness: It shows a hundred five dollars on disorderly conduct, the same as marked on the envelope, Your Honor.

Mr. Aiken: Your Honor, so far as there isn't anything in writing that shows that he paid, is that correct?

A. No.

The Court: Other than what notations are on the envelope that contains the eighty-five dollars, all right. Go ahead, proceed.

Q. Now, Chief, were you present when the change in the Franklin ticket was made?

A. Was I present?

Q. Yes.

A. Well, I was asked for advice on it.

Q. Well, did you see the change made?

The Court: The first question, do you know who made the change if there was a change?

The Witness: No, I don't know who made the change.

The Court: Did you see the change made?

The Witness: I don't recall it, Your Honor.

The Court: You don't know who made the change if you didn't see it.

Q. Now, do you know who made the change on that ticket?

[fol. 606] A. Truthfully, I couldn't say. Not truthfully, no.

Q. Well, you consented to the change, is that correct?

A. Yes, I did.

The Court: All right, you knew it was made?

A. I advised it to be made, Your Honor.

The Court: All right.

Q. Now, do you recall when you advised it to be made?

A. To be specific, I don't know, it would be that afternoon or the next morning, after we contacted the hospital again on the verification of the medicine he took.

Q. Well, you say you called the hospital and they called you back the next day, so that would be two days after the ticket was issued, wouldn't it?

A. Two days, the ticket was issued one day, we called the hospital that day and they called back the following day.

Q. All right, so that the change was made the next day after the ticket was issued?

A. Well, I don't know whether we made it that day or the day before based on the drunkometer reading.

Q. Now, do you know who made the change in the Gregal ticket?

A. It resembles Mrs. Naglee's.

Q. Did you see it done?

The Court: That is not binding upon Mrs. Naglee.

The Witness: I don't recall if I seen it done, but I instructed that it be done.

[fol. 607] Q. After you talked to Officer Virtue?

A. Yes.

Q. And when you instructed it to be done, if you know?

A. I don't recall offhand.

Q. If you will look, is there a bail receipt attached to that, Chief?

A. No, there isn't.

Q. You don't know then when Gregal paid the money?

A. No, there is no bail set on that.

Q. Do you know how much Gregal donated?

A. Not to be specific.

The Court: Well, approximately how much?

The Witness: Well, I would say around $45.00 to $50.00, because that is where he and his father came to the station together.

Q. Now, do you know who made the change on the Finney ticket?

A. No, I couldn't be sure, that was with that, Prosecutor, I think. The fellow out of that envelope.

Q. I don't think he—that belongs there, I don't know where it came from, Your Honor, it was attached to one of the tickets. I am sure it doesn't belong there.

The Court: Mr. Malandra, will you approach the Bench please. Here is a piece of paper which is the Prosecutor's

and even the court in looking at it and Mr. Garrity too, is that correct, is there no reason why you should feel that we are subjecting in his personal life, because it seems to have no connection whatsoever with the rest of the papers in the evidence, do you know anything about it?

[fol. 608] Mr. Malandra: No I don't.

The Court: Show it to Mrs. Naglee and the other gentleman there, if they have any explanation as far as why that should be with these on the other papers,—

Mr. Malandra: That doesn't mean anything, Your Honor.

The Court: Any objection, therefore, if it's removed from those in evidence.

Mr. Malandra: No objection.

The Court: All right, remove it and keep it or throw it away.

Q. I forget what you said about the change in the Finney case.

A. I don't know who made the change, but it was under my instructions that it be made.

Q. After you consulted with Officer Virtue?

A. After Officer Virtue consulted with me on the circumstances of the case.

Q. Do you know when it was changed?

A. No, I couldn't be sure of that.

Q. When was it changed when he paid the money, the day on the receipt and attached there?

A. Prosecutor, I couldn't be sure. That was in May of 1960.

Q. You don't know how many days after the ticket was issued that the change was made?

A. No, I don't, not exactly.

[fol. 609] Q. Do you know who made the change in the Snyder ticket?

A. No.

Q. You didn't see it made and you don't know who made it?

The Court: This is in the same category. You authorized the changing, is that correct?

The Witness: Yes, this was heard by the judge, this one.

The Court: Well, did you know that that was changed?

A. Yes, I think it was changed with your consent and approval, yes.

The Court: All right.

Q. How do you know it was changed by the judge?

A. I said it was heard by the judge.

Q. How do you know it was heard by the judge?

A. Because it is the judge's handwriting on the back of it.

Q. Well, do you have any recollection of your own that he heard it?

A. No, but I can recognize it.

Mr. Malandra: I think it is rather obvious Saul Teitelman testified that he didn't.

The Court: No, no, no, this is still cross-examination proper, I mean he has been asked not the same question, in other words he says and bases his whole opinion on what is [fol. 610] written on the back of the ticket, and the Prosecutor asked him a proper question.

Q. Do you know personally that those I gave to you were made by Judge Teitelman?

A. Well, Prosecutor, the other changes are in blue and this sort of bank activity as far as you know was taken, as I have reference to the ball point.

Q. But, do you have any recollection of consenting to the change on the Snyder ticket?

A. I don't recall it.

Q. You don't recall?

A. I would say Officer Virtue came to me and he asked my advice on a particular circumstance that had arisen out of the issue of a ticket.

Q. So that then there was a conspiracy between you and Virtue about the Snyder ticket?

A. I don't know if there was a common notation. He would take my advice.

Q. Well at any rate you talked about it. You talked to him about it, didn't you?

A. Yes.

Q. And you consented that the change be made didn't you?

A. Under the circumstances I can't recall just what I did at the present time.

The Court: But you did consent?

The Witness: Yes.

Q. Now, do you recall in the Zippel case, the Chief, who made the change on that, that is S-22?

[fol. 611] A. No sir. I don't recall who made it.

Q. Do you recall when it was made?

A. The following day.

Q. Do you recall a meeting with Mrs. Paskel the following day?

A. Mrs. Paskel came to the station, yes she did.

Q. And did you talk to her?

A. Yes.

Q. And as a result of your conversation, what did you do?

A. I advised her or instructed, should I say, Mrs. Naglee to change it because I thought it was a hardship case and that the only thing that would involve her would be if there was a conviction, a commitment.

Q. Now, what a commitment?

A. If there was a conviction in the matter.

The Court: You mean if she didn't have the money she would go to jail?

The Witness: Yes, she would have to go to jail.

Q. On what, drunken driving or disorderly conduct?

A. There is no disorderly conduct here. This is a motor vehicle summons.

Q. Well, the original complaint was drunken driving, wasn't it?

A. Yes.

Q. And she was pronounced drunk by the Doctor, actually, wasn't she?

A. I am not positive.

Q. Well, do you know what the sentence for a first conviction of drunken driving is?

A. Yes, I do.

[fol. 612] Q. What is it?

A. $200.00 fine.

Q. And what else?

A. Revocation of license.

Q. For how long?

A. A two year period.

Q. But that doesn't involve a jail sentence does it?

The Court: There is a provision in there about a jail sentence.

The Witness: It could be one or both, or if you don't have the fine you would be committed in lieu of the fine. It says and/or.

Q. You recall Mrs. Zippel testifying she paid $80.00?

A. I recall her testifying something like that, I don't know the exact amount.

The Court: She said she paid $80.00 to the Paskel woman. She didn't say she paid it to Garrity. Now, let's find out who she paid it to, let's stop this, and further, the Paskel woman said she didn't pay any eighty dollars, she paid $15.00. Now you see, those are the things that the jurors have to consider from your standpoint of the conclusion of concerning all of the testimony.

Mr. Malandra: The sum of sixty-five dollars.

The Court: Well, I don't know whatever it was, she said she paid her, the woman said she never paid her.

The Witness: Prosecutor, it was fifteen dollars and I made a receipt out.

[fol. 613] Q. After the ticket was changed?

A. Yes, now—

Q. Now, did you make the change on the Brining ticket?

A. I don't recall making the change, but I instructed that it be made.

Q. Who did you instruct?

A. Mrs. Naglee.

Q. Do you know when it was made?

A. The change was made I think the following morning, I'm not positive. Mrs. Brining come down to the station with five or six youngsters, from what I can recall, and she told me that would put her husband out of work. I don't know whether he knew she came or not.

Q. Well, is there a receipt attached to that, a bail receipt?

A. Yes.

Q. A bail receipt?

A. No, no bail.

Q. Do you know how much he paid?

A. It says fifteen dollars here, ten dollars fine, five dollars cost.

Q. Do you recollect that he paid thirty-five dollars?

A. No, he didn't. He never paid to me thirty-five dollars.

Q. Well, he was examined by Dr. Cooperman, was he not?

A. Yes, he was.

Q. And the doctor had to be paid for that examination, didn't he?

A. Yes, he did.

Q. Do you know where the money came from to pay him?

A. Mr. Brining would have had to pay him.

Q. Well then, do I take it from your answer that Mr. Brining paid the fifteen dollars plus twenty, or thirty-five dollars?

[fol. 614] A. Prosecutor, do you have a receipt for thirty-five dollars?

Q. If it's not attached there, chief, I don't have any receipt.

A. Well then, there's only fifteen dollars here.

Q. Then you don't know whether Brining paid the twenty dollars to pay the doctor, do you?

A. I am assuming that he did or the doctor would've been after us.

Q. Do you mean that he paid the doctor directly and the money didn't go to you?

A. I don't recall.

Q. Well, it would be a most unusual situation if one of these drivers would pay the doctor himself, wouldn't it?

A. Well, I don't recall the extent as to how it was paid.

Q. Well, didn't the doctor usually get paid when he came down to headquarters?

A. When he stopped down on a hearing night.

Q. Yes, and who was it that usually paid him?

A. Mrs. Naglee, she generally paid him.

Q. And how did she usually pay him by check or cash?

A. By cash.

Q. Do you have any recollection of him ever getting paid by check?

A. No, if he was paid by check it would be deposited in the municipal court and the disbursements out that way. He never got paid in that manner, not that I can recall.

Q. Now chief, how long has it been the practice to issue a drunken driving ticket on a scene where the driver is picked up and suspected of drunken driving?

A. It's not a practice, Prosecutor, and it is a procedure that is followed when the case is brought into court.

[fol. 615] Q. How long has it been it, what do you call the procedure, how long has it been the procedure?

A. I don't think I'm, I don't know, in some of the test cases that were knocked out of court, because of the reason that the ticket was made out before the examination, I would say the latter part of '58 or '59, the beginning of '59.

Q. You never waited until the doctor pronounced the results of the examination to issue a ticket?

A. Not that I can recall.

Q. Now, did you tell Mr. Rigg or Mr. Kaplan or both that that was the practice?

A. I don't recall that, in the Prosecutor's office?

Q. Anywhere.

A. I don't recall that. The night I was there, the whole three of them was questioning me.

Q. As a matter of fact, chief, didn't you tell them that in all these cases there was a hardship case that made you consent to make the change?

A. I said it was circumstances and I didn't elaborate what the circumstances were.

Q. Well, didn't you tell him in the Finney case that he was a truck driver and if he lost his license, it would mean his job?

A. I don't recall it. The night I was in the Prosecutor's office it was three questioning me, this one was whispering to the other—

Mr. Aiken: There is no question pending, chief, we'll be here until next week.

The Court: You will be anyway, as a practical matter, but you won't be here after four o'clock, because we're going to quit right now. You will return please tomorrow [fol. 616] morning about a quarter of ten, same room, 324. Spectators remain seated until the jury leaves. You are excused for the day.

(Whereupon court is adjourned for the day.)

May 10, 1963.

Camden, New Jersey.

(Jury roll-call taken, everyone present.)

The Court: When we finished yesterday, I believe Mr. Garrity was under cross-examination. You have already been sworn, you realize of course, you are still under oath.

EDWARD J. GARRITY, having been previously sworn, testifies as follows:

Cross-examination.

By Mr. Aiken:

Q. Mr. Garrity, was there a prescribed procedure set up in your department for taking care of tickets that were issued in error?

A. Taking care of tickets that were issued in error?

Q. What was the procedure when a ticket was issued in error?

[fol. 617] A. Well, the judge would decide what to do with that, if a ticket was issued in error.

Q. Didn't you hear the judge testify that there was a ticket control docket sheet and that this ticket was issued in error was to be entered there and marked void and an affidavit filed to support it, or what happened, what caused the error.

A. Well, the last I remember recently that when was marked void, that an explanation was given but prior to that, I didn't know of any.

Q. Well, you did hear the judge's testimony on that point.

A. I think I heard him say that, yes.

Q. Nobody ever told you just until just recently that that was the procedure set up to take care of tickets that had been issued in error?

Q. Prosecutor, I said just recently, when one was issued that was the procedure followed then.

Q. But did you know of that procedure during '59, '60 and '61?

A. No sir.

Q. You didn't know that, nobody told you?

A. No sir.

Q. Did you have a traffic control docket down there in police headquarters or in the clerk's office of the municipal clerk?

A. That is under the court, yes.

Q. Well, you know it's there, don't you, and it's there for some years, hasn't it?

A. Yes.

Q. Yes, and you knew the procedure too, didn't you, chief?

[fol. 618] Mr. Malandra: If Your Honor please, he is talking about the duties of the clerk.

The Court: Now, it's within reason. You see, the chief has already given testimony that or at least I can draw from an inference that he was pretty well acquainted with the whole of the operation of the police department and under the circumstances, of course, the issue was not avoiding tickets and alike, I would assume, would be something within his status as a chief. I will permit it. Go ahead, Prosecutor.

A. As a matter of fact, chief, there is some instances in the docket that is in evidence now, that have been marked void for some reason, relating to error, hasn't there?

The Court: Were you acquainted with that book, chief?

The Witness: No, I am not. I have seen it, but—

The Court: All right, whichever book it is has to do with it.

Q. As a matter of fact, I show you on page 2 of the municipal court traffic docket, S-3 in evidence, and ask you if there isn't an entry there on a void ticket?

A. There is void, but I don't know what the reason is, Prosecutor.

Q. It doesn't show the reason here, but it's marked void and wasn't that the procedure when a ticket was issued in error?

[fol. 619] A. I never knew that, I only remember when they were spoiled, obliterated or something like that.

Q. Now, I think you have heard testimony during this trial, chief, that Mrs. Naglee and her dockets entered on the disorderly conduct charges entries that indicated that six defendants in this case entered pleas of guilty in court.

The Court: Not the defendants, Prosecutor. The six persons who were involved in the overt acts as set up in the indictment.

Q. Yes, six drivers that they appeared in court and plead guilty, did you hear that testimony?

A. Yes.

Q. Now, you know as a matter of fact that they did not appear in court and did not plead guilty in court, do you?

A. Not all of them.

Q. I don't understand what you mean by that answer, chief, will you explain that to me?

A. Well, one of them I think the judge heard the case.

Q. But how about the others?

A. Not that I know of, not that I can recall.

Q. You know they didn't appear in court, don't you?

A. Yes.

Q. And you knew that it was a mandatory appearance on a disorderly conduct charge, didn't you?

A. I didn't know it was mandatory, they could forfeit.

Q. Well, chief, on the disorderly conduct charges, didn't you tell them they didn't have to appear in court?

A. Specifically?

Q. Or some of them.

A. Specifically?

Q. Yes.

[fol. 620] A. No.

Q. You didn't tell any of them that they didn't have to appear in court on a disorderly conduct charge?

A. Not that I recall.

Q. Or that they just didn't have to appear, whatever the charge was?

A. Well, it wasn't a mandatory appearance.

Q. Well, didn't you hear Judge Teitelman testify that a disorderly conduct charge was a mandatory appearance?

A. But it isn't, Prosecutor.

Q. Are you telling me that a disorderly conduct charge can be handled in the violations bureau?

A. Not through the violations bureau.

Q. No?

A. But it is quasi-criminal.

Q. Well, you know, don't you chief, that it requires a mandatory appearance in court before the judge to dispose of that case?

A. No, I don't.

Q. You don't?

A. No.

Q. Did you give Mrs. Naglee any instructions concerning the entries to be made in the dockets relating to the six disorderly conduct charges that show on the records?

A. Specific instructions?

Q. Yes, did you tell her how to enter them when they didn't appear?

A. No, I think they were entered on a court night.

Q. Did you tell her what to do?

A. Yes.

Q. And I take it from that that you told her then to enter in the docket the entries that shows that they ap-
[fol. 621] peared in court, and plead guilty when actually they did not appear in court, is that right?

A. Well, when they didn't appear in court that evening, it was marked as no appearance in court.

Q. But it should have been marked that they didn't appear and forfeited their bail?

A. It should have been marked forfeit.

Q. But it wasn't marked that way, it was marked as if they had appeared and plead guilty, wasn't it?

A. Yes.

Q. And you told her to do that?

A. Yes.

Q. And you knew that it wasn't proper, too, didn't you chief?

Mr. Malandra: I object.

The Court: I will permit it.

Mr. Malandra: All right, I will withdraw my objection.

The Witness: Yes, I knew it was improper.

Q. And you knew also that if there was no appearance the bail that was posted should have been forfeited all of it, didn't you?

A. Yes, it should have.

Q. Now, the testimony has been that Dr. Cooperman examined seven of the eight drivers involved in the overt acts of this indictment, chief, and in connection with those examinations he made a written report, did he not?

A. Yes he did.

[fol. 622] Q. Now, do you know what happened to those written reports?

A. I already stated that they were destroyed.

Q. And who destroyed them?

A. Well, I don't recall offhand. They were destroyed when the case was disposed of.

Q. Was that when the drivers came in and paid the money to you or to Mrs. Naglee or whoever it was?

A. Or when there was no appearance in court.

Q. Well now, you told several of these drivers, chief, that they didn't have to appear in court, didn't you?

A. I said it wasn't mandatory.

Q. Yes. Well, did you destroy it or were the doctor's reports destroyed at the time you told them they didn't have to appear?

A. I don't recall that, Prosecutor.

Q. Now, you testified yesterday under direct examination, chief, that there was nothing underhanded about these procedures and everything was open and above board. Let me ask you when it was you first told Mr. Rigg about any drunken driving tickets that were fixed, if you remember now, chief.

A. In the latter part of 1961.

Q. And do you remember which case it was?

A. I don't remember offhand.

The Court: If you know the case, Prosecutor, you can ask him point blank.

Q. Yes, I will Your Honor, and do you know that Mr. Rigg first came down there in July of '61?

A. That's right.

Q. And he took your statement on November 10, of 1961.

[fol. 623] A. Yes.

Q. And isn't it true that the first time you ever told him about a drunken driving ticket being altered was in connection with the Scott case on November 10th?

A. As I recall.

Q. Yes.

A. The Attorney General can testify to that.

Q. Now, in connection with the Scott case, I want to ask you a few more questions about that envelope that we looked at yesterday, chief. Now, there is a disorderly complaint that was in that envelope, it is now marked S-25 for identification, as part of S-31 in evidence. Is that the original complaint?

A. On the disorderly?

Q. Yes.

A. Yes, that would be the original complaint.

Q. Now, why was that in the envelope?

A. That was in the envelope with the money from what I can recall.

Q. I know it was. Why was it there I am asking you?

A. To show Mr. Scott specifically what he was charged with.

Q. You mean he hadn't been given a copy of the complaint at any time previously?

A. No.

Q. Isn't that complaint a part of the court record?

A. Yes.

Q. And shouldn't that have been a part of the court records?

A. Well, explain that, Prosecutor.

Q. Well, you have files down in your headquarters, don't you, that contain complaints?

A. Yes.

[fol. 624] Q. In criminal matters?

A. Yes.

Q. And shouldn't that complaint have been with the Scott file?

A. Well, this complaint was in the municipal court safe.

Q. Yes, but it wasn't a regular file, was it?

A. No, it was in a safe with the money.

Q. And there is a notation on the back in Mrs. Naglee's handwriting, I believe, that indicates that the disposition of the case doesn't it?

A. Yes.

Q. And what was that disposition?

A. Guilty.

Q. And who purported to sign that?

A. The complainant.

Q. No, the note on the back.

A. Saul Teitelman.

Q. Yes, and you know that is not Judge Teitelman's signature there, don't you?

A. I know it is not his signature.

Q. As a matter of fact, Mrs. Naglee even misspelled his name when she wrote it there, didn't she?

Mr. Malandra: I object to that, if Your Honor please.

The Court: Do you know who wrote that on there?

The Witness: It resembles Mrs. Naglee's handwriting, but she signs plenty of court records for the judge.

Q. Well, at any rate—

A. With his consent.

Q. You know, don't you that Mr. Scott never actually [fol. 625] appeared in court and never plead guilty to anything in court?

A. Yes sir.

Q. But the record on the complaint shows that he did, doesn't it?

A. Yes.

Q. And you knew about it, didn't you?

A. Yes.

Q. I think that's all.

The Court: That's all. You may step down, and thank you.

(Witness excused.)

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[fol. 688]

IN THE CAMDEN COUNTY COURT

LAW DIVISION

(Criminal)

Indictment No. 327-62.

THE STATE OF NEW JERSEY

vs.

EDWARD J. GARRITY, Defendant.

JUDGMENT—Entered September 26, 1963

The defendant on 3/28/63 having entered a plea of Not Guilty to Indictment No. 327-62 for the crime of Conspiracy [fol. 689] to Pervert or Obstruct Due Administration of Laws and the defendant having on 4/29/63 been tried with a jury and a verdict of guilty having been rendered on 5/13/63.

It is, therefore, on this 26th day of September, 1963,

Ordered and Adjudged that the defendant be and is sentenced to Three months county jail, and Suspended, on condition that $100.00 fine is paid. To stand committed until fine is paid. On Motion of Mr. Malandra, attorney for the defendant, that an appeal is intended. Bail is continued on other indictments. Granted by the court.

Anthony C. Mitchell, Judge.

[fol. 690]

IN THE CAMDEN COUNTY COURT

LAW DIVISION

(Criminal)

Indictment No. 327-62.

THE STATE OF NEW JERSEY

vs.

EDWARD VIRTUE, Defendant.

JUDGMENT—Entered September 26, 1963

The defendant on 3/28/63 having entered a plea of Not Guilty to Indictment No. 327-62 for the crime of Conspiracy to Pervert or Obstruct Due Administration of Laws and the defendant having on 4/29/63 Been Tried with a Jury and a verdict of Guilty having been rendered on 5/13/63.

It is, therefore, on this 26th day of September, 1963,

Ordered and Adjudged that the defendant be and is sentenced to Three months county jail, and Suspended, on condition that $100.00 fine is paid. To stand committed until fine is paid. On Motion of Mr. Malandra, attorney for the defendant, that an appeal is intended. Bail is continued on other indictments. Granted by the court.

Anthony C. Mitchell, Judge.

[fol. 691]

IN THE CAMDEN COUNTY COURT

LAW DIVISION

(Criminal)

Indictment No. 327-62.

THE STATE OF NEW JERSEY

vs.

HELEN B. NAGLEE, Defendant.

JUDGMENT—Entered September 26, 1963

The defendant on 3/28/63 having entered a plea of Not Guilty to Indictment No. 327-62 for the crime of Conspiracy to Pervert or Obstruct Due Administration of Laws and the defendant having on 4/29/63 Been Tried with a Jury and a verdict of having been rendered on 5/13/63.

It is, therefore, on this 26th day of September, 1963,

Ordered and Adjudged that the defendant be and is sentenced to Three months county jail, and Suspended, on condition that $100.00 fine is paid. To stand committed [fol. 692] until fine is paid. On Motion of Mr. Malandra, attorney for the defendants, that an appeal is intended. Bail is continued on other indictments. Granted by the court.

Anthony C. Mitchell, Judge.

IN THE CAMDEN COUNTY COURT

NOTICE OF APPEAL TO APPELLATE DIVISION—
October 23, 1963

Notice is hereby given that the defendants-appellants, Helen B. Naglee, who resides at 316 Saunders Avenue, Bellmawr, New Jersey, Edward Virtue, who resides at 220 Second Avenue, Bellmawr, New Jersey, and Edward J. Garrity, who resides at 22 Brown Avenue, Bellmawr, New Jersey, appeal to the Appellate Division of the Superior Court of New Jersey, from the final judgment of conviction of the Camden County Court, Law Division on September 26, 1963. The offense of which the defendants were convicted was conspiracy to pervert or obstruct due administration of laws. Defendants-appellants were sentenced by the said court which sentence was three months imprisonment in the County Jail and which sentence was suspended on condition that $100 fine be paid.

ANGELO D. MALANDRA,
Attorney for Defendants-Appellants.

[fol. 693] Certificate of service (omitted in printing).

[fol. 694]

IN THE SUPREME COURT OF NEW JERSEY

A-43 September Term 1964

STATE OF NEW JERSEY, Plaintiff-Respondent,

vs.

HELEN B. NAGLEE, EDWARD J. GARRITY, and EDWARD VIRTUE, Defendants-Appellants.

OPINION—March 1, 1965

Argued January 5, 1965 Decided March 1, 1965

Mr. C. Zachary Seltzer argued the cause for the defendants-appellants (*Mr. Angelo D. Malandra,* attorney).

Mr. Norman Heine, Prosecutor of Camden County, argued the cause for the plaintiff-respondent.

The opinion of the court was delivered by

PROCTOR, J.

The defendants, Helen Naglee, Edward J. Garrity, and Edward Virtue were tried before a jury in Camden County and convicted for conspiracy to obstruct the due administration of the Motor Vehicle Traffic Laws.[1] After the trial judge denied their motion for a new trial, they appealed.

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[1] N.J.S.A. 2A:98-1 provides:

"Any 2 or more persons who conspire:

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h. To commit any act for the perversion or obstruction of justice or the due administration of the laws—

Are guilty of a conspiracy and each shall be punished . . . as for a misdemeanor."

We certified the matter on our own motion before argument in the Appellate Division.[2]

[fol. 695] The indictment charged that between 1959 and June 29, 1961, Helen Naglee was the Violations Clerk and the Municipal Court Clerk, Edward J. Garrity was the Chief of Police, and Edward Virtue was a police officer, all in the Borough of Bellmawr. The indictment further charged that between those dates the defendants had agreed to dispose of eight drunken driving cases (*N.J.S.A.* 39:4-50) by altering to a lesser charge the tickets issued by the defendant Virtue; that in furtherance of the conspiracy entries were made in the municipal court dockets showing that the traffic offenders appeared in open court and were fined by the magistrate, when in fact no hearings were held. It was further alleged that Chief Garrity required some of the offenders to post bail and then arbitrarily fixed the fines; in some instances Chief Garrity diverted the difference between the amount of the bail and the amount of the fines to unauthorized uses.

The State in its case in chief offered in evidence several traffic tickets issued by the defendant Virtue. One of these had been altered from drunken driving to improper passing, and the others from drunken driving to careless driving. The State also introduced receipts given to the offenders signed by Helen Naglee or Chief Garrity. Several of the receipts indicated that the traffic offender had also been fined for disorderly conduct. The municipal magistrate testified that his purported signature on several of the traffic tickets was a forgery. Eight alleged traffic offenders testified that they were originally charged by Virtue with drunken driving, that they had paid a fine for offenses other than drunken driving, but that they had never appeared before the municipal magistrate. Several testified that they had posted cash bail for their appear-

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[2] While the appeal was pending, Helen Naglee died. Her appeal will nevertheless be considered pursuant to R.R. 1:2-4(b). See *City of Newark* v. *Pulverman*, 12 N.J. 105 (1953).

ance, and after talking to Virtue and Garrity, had paid [fol. 696] Garrity a "fine" for careless driving and a "fine" for disorderly conduct. In several instances where the amount of the bail posted was greater than the fine assessed, the difference was not returned to the traffic offender.

Dr. Cooperman testified that he had examined, on behalf of the Borough, several of the alleged offenders for intoxication; that he had made records of his findings and turned them over to the police department, but he had not retained written copies and could not recall the results of the tests. Deputy Attorney General Budd M. Rigg and Detective John F. Corbin of the New Jersey State Police Department, who had been assigned pursuant to an order of this court, to investigate the altering of tickets in the Borough, both testified that Chief Garrity had told them that he had disposed of Dr. Cooperman's medical reports because the tickets had been downgraded.

The State introduced in evidence two statements made by each defendant. The first statement was given to Deputy Attorney General Rigg on November 10, 1961, and the second was given to Camden County Assistant Prosecutor Sidney Kaplan in December 1962.

Defendant Virtue in his statement of November 10, 1961 to Mr. Rigg, admitted that he had participated in the practice of altering tickets. Defendant Naglee in her statement to Mr. Rigg admitted that she had altered tickets at Chief Garrity's request and that she had made notations indicating that the alleged traffic offenders had appeared in court, had pleaded guilty and were fined by the magistrate, when in fact they had never appeared. She also admitted that she had signed the magistrate's signature on several traffic tickets. In his statement to Mr. Rigg, [fol. 697] Chief Garrity said that no tickets could be altered without his consent. With reference to one alleged offender who had posted bail of $225.00, Garrity said that he had come to an understanding with the offender, that the offender could pay a total fine of $140.00 and not appear

in court; that the $85.00 balance was placed in an envelope and kept in a safe in the police station.

In defendant Virtue's statement to Mr. Kaplan, he admitted that one of the eight alleged traffic offenders was examined and found to be under the influence of alcohol, but the charge had been downgraded to careless driving because a hardship was involved. He also admitted that the change on the face of another of the eight tickets was in his handwriting and that he had consented to a change in a third case. Mrs. Naglee, in her statement to Mr. Kaplan, stated that she had made the changes in the cases of five of the eight alleged traffic offenders. She admitted signing the magistrate's name below an entry which indicated a court hearing, a plea of guilty and the imposition of a fine in two cases. She stated that where tickets were altered, the arrested person, if he had a hardship, would go to the arresting officer and that the officer would refer the case to Chief Garrity. Garrity, in his statement to Mr. Kaplan, stated that before he would direct Mrs. Naglee to alter a ticket he would obtain the arresting officer's consent. He admitted changing a number of drunken driving charges to careless driving and disorderly conduct.

All of the defendants testified in their own defense. All said that they did not receive any money for their personal gain.

Helen Naglee testified there was no express agreement [fol. 698] between Garrity, Virtue and herself to alter tickets. However, she admitted that she had altered tickets at Chief Garrity's request. She said that she did not know it was wrong to alter the tickets although she did know persons charged with disorderly conduct were supposed to appear in court. She said that the excess money paid by the alleged traffic offenders was kept in a locked drawer in her desk.

Defendant Virtue testified that there was no agreement between Garrity, Naglee and himself to alter tickets. However, he admitted that one of the eight cases had been altered because of hardship. He also admitted downgrading another ticket because it was a "borderline case." In

the other cases the doctor's examination had revealed insufficient intoxication to press the charge, and therefore the charge was altered. He said that the tickets for drunken driving were given on the highway and that the alterations took place after the doctor's examination. He said that he had destroyed the drunkometer reports with Chief Garrity's consent because they did not show legal intoxication.

Garrity, like Virtue and Mrs. Naglee, testified that he had not conspired to alter any tickets. He said that in six of the eight cases the tickets were altered after conferring with Virtue because intoxication could not be proved. In four of the cases he stated that the alleged traffic violators had made donations to the police fund for equipment of the difference between the balance they had originally paid and the fine eventually imposed. Chief Garrity admitted that he had instructed Mrs. Naglee to make entries in the court dockets to show that six of the offenders had appeared in court, when actually none of them had appeared. [fol. 699] In rebuttal, the State called five of the alleged traffic offenders who all testified, in contradiction to the defendant Virtue's testimony, that the tickets were issued in police headquarters and not on the highway. Two of these witnesses also testified, in contradiction to Chief Garrity's testimony, that they did not indicate to him that they were making donations for police equipment.

On this appeal, the defendants Garrity and Virtue contend that their statements, taken by Deputy Attorney General Rigg and Assistant Prosecutor Kaplan, were erroneously introduced into evidence because they were involuntary. They contend that their statements were coerced by Mr. Rigg's threat that if they failed to give a statement, they would lose their positions with the police department.

Before Mr. Rigg took the statement of Virtue, he advised him:

> "• • • I want to advise you anything you say must be voluntary, of your own free will, without threats or

coercion or promise, or reward and anything you do say may be used against you or any person in a subsequent criminal proceeding, or proceedings, in the courts of our state. You do have under our statutes, as you may know, a privilege to refuse to disclose any information which may tend to incriminate you. However, if you make such a disclosure, with knowledge of this right and without coercion, you thereby waive this right or privilege with regard to any phase of this investigation. *This right or privilege that you have is limited to the extent that you as a police officer once sworn and asked questions pertaining to your office and your conduct therein, if you refuse to answer, you may then be subject to a proceeding to have you removed from the department.*" (Emphasis supplied.)

A similar preliminary statement was given to the defendant Garrity. The preliminary statement given by Mr. Rigg to Mrs. Naglee did not contain the emphasized warning quoted above.

[fol. 700] Historically, the initial reason for excluding an involuntary confession was the fear it was untrue. But a second reason not at all inconsistent with the first, but which may operate independently of the risk of untruthfulness is the desire to enforce decently restrained behavior by police officers. See *Rogers* v. *Richmond,* 365 U.S. 534, 541, 5 L.Ed.2d 760, 766-67 (1961), where the court stated that the constitutional exclusion of involuntary confessions rests not upon their probable untruth but rather upon the unconscionable methods used. See also *Maguire, Evidence of Guilt,* 109 (1959). Thus, in determining whether a confession is involuntary courts have considered not only the degree and extent of the compulsion used to make the declarant confess, also whether the nature of the interrogation was fair. Of course, an involuntary confession is inadmissible. The test for determining involuntariness is whether the defendant's will was overborne and his capac-

ity for self-determination critically impaired. *Culombe* v. *Connecticut,* 367 U.S. 568, 602, 6 L.Ed.2d 1037, 1057-58 (1961); *State* v. *Wade,* 40 N.J. 27, 35 (1963). This test implies that some coercion may exist when a statement is taken without being of sufficient strength to overbear the will of the declarant. As a matter of common knowledge every official interrogation, no matter how civilly conducted, by its very nature tends to compel the person questioned to answer. Thus, the term "coerced confession" in a sense is a misnomer since virtually all confessions are accompanied by some degree of coercion.[3] Therefore, an appellate [fol. 701] court must examine the entire record to determine not merely whether coercive pressures were present, but whether under the totality of the circumstances they were of an offensive nature and were sufficient in degree to render the declarant incapable of freely exercising his will.

Before the defendants' statements were introduced in evidence, the trial court held a preliminary hearing in the absence of the jury to determine the voluntariness of the statements. The State's evidence showed that the statements of the defendants were given under the following circumstances: Assistant Attorney General Rigg, as a result of an order issued by this court on June 30, 1961, had begun an investigation of alleged irregularities in the Bellmawr Municipal Court. After a long preliminary investigation, during which he had talked to Chief Garrity on several occasions, he had scheduled the taking of statements from the defendants during the last week of October,

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[3] As Justice Hall said in *State* v. *Smith,* 32 N.J. 501, 550 (1960), *cert. denied,* 364 U.S. 936, 5 L.Ed.2d 367 (1961):

> "An interrogation, no matter how conscientiously conducted is naturally bound to be a tense occasion and to evoke apprehension, nervousness and a sense of pressure, no matter what the situation, which will be heightened in a person who knows he is guilty by consciousness of guilt and fear of the legal penalty. It must be recognized that it is not this kind of normal stress, fear and pressure which can make the questioning unfair and a confession involuntary."

but he postponed the interrogations until November 10, 1961. The defendants were interrogated in a room in the firehouse which was adjacent to the police station in Bellmawr. Chief Garrity had made arrangements for Mr. Rigg to use this room for the interrogations. The statements were taken during the day and there is no evidence to indicate that the defendants were questioned or detained for any period of time before the actual statements were taken. Nor is there any evidence that the defendants were reluctant to give the statements. Mr. Rigg testified that as he and Chief Garrity were walking to the firehouse, Garrity told him that he had arranged for counsel but that he did not think counsel would be necessary at that point. Mr. Rigg and Lawrence Garifo, the court stenographer who took the statements, both testified that although the de- [fol. 702] fendants were nervous at times, nothing unusual occurred during the interrogations.

Although the defendants at the preliminary hearing had full opportunity to testify concerning the voluntariness of their statements, none took the stand. There is therefore no evidence that their statements were in fact coerced by the preliminary statement made by Mr. Rigg. There is nothing in the record inconsistent with the conclusion that each defendant came to the fire hall with the intention of making a statement. Nor is there anything to suggest that the interrogation was not conducted in a polite and civil manner with due consideration for the defendants' comfort. The record lacks all of the elements of coercive tactics which were present in prior cases holding confessions to be involuntary. Here there is no physical coercion, no overbearing tactics of psychological persuasion, no lengthy incommunicado detention, and no efforts to humiliate or ridicule the defendants. The overt circumstances show that the interrogation was conducted with a high degree of civility and restraint. We are convinced that the State sustained its burden of proving that the degree of coercion exerted upon the defendants could not have been sufficient to overbear their wills.

Defendants contend that Mr. Rigg's "threat" constituted a type of coercion which he was not entitled to assert. They urge that the Deputy Attorney General was alluding to N.J.S.A. 2A:81-17.1.[4] However, he neither referred to [fol. 703] the statute by name nor quoted from it. He merely said, "This right or privilege [of refusing to answer on the ground of self-incrimination] that you have is limited to the extent that you as a police officer once sworn and asked questions pertaining to your office and your conduct therein, if you refuse to answer, you may then be subject to a proceeding to have you removed from the department."

As policemen, Garrity and Virtue held sensitive positions in regard to reporting and prosecuting violations of the law. Surely, a police officer who refuses to cooperate in a proper investigation of his official conduct is acting inconsistently with his police duties. He is therefore prop-

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[4] N.J.S.A. 2A:81-17.1 provides:

"Any person holding or who has held any elective or appointive public office, position or employment (whether State, county or municipal), who refuses to testify upon matters relating to the office, position or employment in any criminal proceeding wherein he is a defendant or is called as a witness on behalf of the prosecution, upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself or refuses to waive immunity when called by a grand jury to testify thereon or who willfully refuses or fails to appear before any court, commission or body of this State which has the right to inquire under oath upon matters relating to the office, position or employment of such person or who, having been sworn, refuses to testify or to answer any material question upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself, shall, if holding elective or public office, position or employment, be removed therefrom or shall thereby forfeit his office, position or employment and any vested or future right of tenure or pension granted to him by any law of this State provided the inquiry relates to a matter which occurred or arose within the preceding five years. Any person so forfeiting his office, position or employment shall not thereafter be eligible for election or appointment to any public office, position or employment in this State."

erly subject to subsequent dismissal proceedings. *Fallon* v. *New Orleans Police Department,* 238 La. 531, 115 So.2d [fol. 704] 844 (1959); *Fichera* v. *State Personnel Board,* 32 Cal.Rptr. 159, 163 (Dist.Ct.App.1963); see also *Canteline* v. *McClellan,* 282 N.Y. 166, 25 N.E.2d 972 (1940); *Souder* v. *Philadelphia,* 305 Pa. 1, 156 Atl. 245 (1931); *Scholl* v. *Bell,* 125 Ky. 750, 102 S.W. 248 (1907). The obligation to cooperate does not depend on the existence of a statute or rule. It is intrinsic to the position of a police officer. *Christal* v. *Police Comm'r of San Francisco,* 33 Cal.App.2d 564, 92 P.2d 416 (1939). See also *Drury* v. *Hurley,* 339 Ill.App. 33, 88 N.E.2d 728 (1949); and *In re Emmons,* 63 N.J. Super. 136 (App.Div. 1960). It is to be noted that the above cases recognize the right of a policeman to assert his privilege against self-incrimination; but he may be discharged for doing so. A subseqent discharge is not predicated upon an inference of guilt from the police officer's refusal to testify, but upon his failure to cooperate in a situation where his duty compels cooperation. See the discussion in Ratner, *Consequences of Exercising the Privilege Against Self-Incrimination,* 24 U.Chi.L.Rev. 472, 503-4 (1957).

We therefore conclude that Mr. Rigg's warning to Garrity and Virtue that their refusal to answer his questions might subject them to removal proceedings was a type of compulsion which may be legitimately used.

Defendants contend that their subsequent statements taken by Mr. Kaplan were involuntary and hence inadmissible. They argue that even though Mr. Kaplan made no suggestion that they might lose their jobs, Mr. Rigg's "threat" controlled the character of their later statements and rendered them inadmissible. Since we have concluded that Mr. Rigg's so-called threat did not make the state- [fol. 705] ments given to him involuntary, it follows that the "threat" could not make the statements given to Mr. Kaplan involuntary.

Defendants also allege in their brief that additional coercive pressures were exerted upon them during Mr. Kap-

lan's interrogation. Our examination of the record shows this allegation to be without substance.

The defendants further contend that their statements were involuntary because neither Mr. Rigg nor Mr. Kaplan advised them of their right to counsel. While failure to advise a suspect of his right to counsel is an element to be considered on the issue of voluntariness of an inculpatory statement, the weight to be given this factor depends upon the circumstances of the interrogation. Unlike most suspects, the defendants here were intimately associated with law enforcement and it would be unreasonable to assume that they were not aware of their rights in this situation. There is no suggestion that had the defendants asked that their counsel be present, such request would have been denied. Indeed, Chief Garrity prior to the interrogation told Mr. Rigg that he had arranged for counsel but that he had decided that counsel's presence at that point would be unnecessary. The defendants do not claim that the trial judge did not consider the interrogator's failure to warn them of their right to counsel. We therefore conclude that in the circumstances of these interrogations the failure to advise the defendants did not render their statements involuntary.

The defendants rely upon *Escobedo* v. *Illinois*, 378 U.S. 478, 12 L.Ed.2d 977 (1964), decided since their trial. That case is a far cry from the situation before us. There the suspect was accused of murder. He was taken into custody and grilled at the police station. He refused for several [fol. 706] hours to give the police his statement and it was only after a denial by the police of his repeated requests to see his lawyer, and his lawyer's repeated requests to see him, that he confessed. In that case the denial of counsel could have been a significant factor in producing the defendant's confession. But under the circumstances of the present case which we have outlined above, we conclude that the absence of advice to these defendants was not a significant factor in obtaining their statements.

We hold the trial judge was correct in his determination that the statements given by the defendants were admissible.

The defendants further contend that N.J.S.A. 2A:81-17.1 is unconstitutional. As we have mentioned earlier in this opinion, Mr. Rigg did not expressly threaten to invoke the sanction of the statute against the defendants Garrity and Virtue. The warning he gave them was to the effect that if they did not cooperate in the investigation they might be subject to dismissal as a result of a subsequent proceeding. We determined that such a dismissal would be proper even in the absence of a statute. Therefore, we conclude that the defendants, in the circumstances of this case, are not in a position to challenge the constitutionality of the statute.

The defendants in their brief have made a point which we have not previously discussed. They contend that a public official may not be subjected to a penalty (here the loss of employment) because of the exercise of a legal right (here the constitutional right to refuse to answer questions on the ground that the answers would be self-incriminatory). But there are situations where a public official's right to retain his position may properly depend upon a willingness to forego a constitutional right to the extent [fol. 707] that the exercise of such a right may be inconsistent with the performance of the duties of his position. For example, a member of the judiciary of this State cannot engage in partisan political activity.

The question is not whether the State can require an employee to forego the exercise of the constitutional right. Of course it cannot. The question is whether the State's requirement that a given employee forego a given constitutional right as a condition of continued employment is *reasonable*. We need not now determine whether it would be reasonable for the State, under other circumstances, to dismiss employees holding other public positions because they refuse to answer questions on the ground of self-incrimination. See Ratner, *supra* at 504-511. We think it reasonable, however, for the State, in a proper proceeding,

to dismiss a police officer for refusal to answer questions pertaining to his official position in an investigation such as the one conducted here.

The defendants next contend that the failure of the State to introduce evidence before the jury on the issue of the voluntariness of their statements was plain error. See R.R.1:5-1(a). It is settled in this State that when the State seeks to introduce the out-of-court statement of a defendant in a criminal trial the trial judge must make his own finding upon the issue of voluntariness; and if he finds the statement to be voluntary and hence admissible, he must instruct the jury to consider the same issue and to disregard the statement unless it finds the State has proved the statement was voluntarily obtained. *State* v. *LaPierre,* 39 N.J. 156, 162-63, cert. denied, 374 U.S. 852, 10 L.Ed.2d 1073 (1963).

[fol. 708] When the State sought to introduce the defendants' statements in evidence, the jury was excused and the court conducted a hearing to determine their admissibility. The court initially considered the voluntariness of the statements. The State produced several witnesses who testified to the manner in which the statements were taken. The defendants offered no contradictory testimony. The court held that the statements were voluntary. The court then considered whether certain parts of the statements should be deleted as irrelevant. After a lengthy discussion with counsel, numerous deletions were made. The court then proposed that the stenographer, who had transcribed the statements, read them as deleted to the jury. Both counsel for the State and the defendants acquiesced, and the statements were then read to the jury. The State did not repeat the testimony as to the manner in which the statements were taken and the defendants again offered no testimony on the issue of voluntariness. When the statements were read to the jury, the defendants made no objection on the ground that the State had offered no evidence of voluntariness for the jury's consideration. The trial court did not mention the question of voluntariness in its charge, and the defendants again did not object. Fur-

ther, on their motion for a new trial defendants did not raise the issue.

The State contends that its failure to present evidence to the jury on the issue of voluntariness is attributable to an understanding among the trial court, the prosecutor and defense counsel that the State need not present such evidence. At oral argument we directed that this matter be returned to the trial court for clarification. At the hearing conducted by the trial court, the respective recollections of the judge, the prosecutor and defense counsel were somewhat at variance. The judge had not refreshed his [fol. 709] recollection by examining the trial record. On our examination of the transcript of this hearing and of the original trial record, we are satisfied that there was at least an implicit agreement that the State need not produce witnesses before the jury on the voluntariness of the statements. It is clear that the defendants were not urging involuntariness in the traditional sense, but rather only the narrow legal issue which we have previously discussed. There was therefore no reason for the trial court to charge the jury on that issue. In any event, it cannot be said in the circumstances of this case that the omission was prejudicial error since in our opinion the jury as reasonable men could not have found the statements to have been involuntary. See *State* v. *Smith,* 32 N.J. 501, 560 (1960), cert. denied, 364 U.S. 936, 5 L.E.2d 367 (1961). A fortiori, the omission was not plain error, as it could not have had the clear capacity to bring about an unjust result. *State* v. *Corby,* 28 N.J. 106, 108 (1958).

The defendants further contend that the acts alleged in the indictment do not constitute the crime charged. They argue that the acts alleged constitute contempt of court under R.R.8:10-2, and therefore cannot be the crime of conspiracy to obstruct justice under N.J.S.A. 2A:98-1(h). This point is clearly without merit. This court in the exercise of its rule-making power cannot deprive the Legislature of its right to determine the type of conduct which constitutes a substantive crime.

Finally, the defendants contend that their motions for judgments of acquittal at the end of the State's case and at the end of the entire case should have been granted, and that the verdict was contrary to the weight of the evidence. The State, in its case in chief presented ample evidence, [fol. 710] including the statements we have found admissible, from which the jury could properly conclude that the defendants were guilty of the crime charged. The evidence introduced in behalf of the defendants did not refute the State's evidence; indeed, except for a denial of an express agreement, their testimony corroborated the State's proof. The jury could properly find each defendant was acting in agreement with the other defendants in downgrading tickets and falsifying court records. Participation in a criminal conspiracy need not be proved by direct evidence; a common purpose and plan may be inferred from a development and a collocation of circumstances. *Glasser* v. *United States*, 315 U.S. 60, 80, 86 L.Ed. 680, 704 (1942).

The judgments of conviction are affirmed.

[fol. 711]

IN THE SUPREME COURT OF NEW JERSEY

Appeal Docket No. 457

EDWARD J. GARRITY and EDWARD VIRTUE, Appellants,

vs.

STATE OF NEW JERSEY, Respondent.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—May 25, 1965

I.

Notice is hereby given that Edward J. Garrity and Edward Virtue, the appellants above named, hereby appeal to the Supreme Court of the United States from the final

order of the Supreme Court of New Jersey affirming the judgments of conviction of said appellants, which order was entered herein on March 1, 1965.

This appeal is taken pursuant to Title 28 U.S. Code Sec. 1257(2).

Appellants were convicted on charge of conspiracy to obstruct the administration of the New Jersey Motor Vehicle Traffic Laws contrary to the provisions of N.J.S. 2A:98-1 and 2A:98-2 and were sentenced to three (3) months in the county jail, which sentence was suspended on the condition that One Hundred ($100.00) Dollars fine be paid. The fine has been paid and defendants are not now in custody.

II.

The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

A. Joint Appendix, Volumes I and II, filed in these proceedings.

[fol. 712] B. Decision of the Supreme Court of New Jersey entered March 1, 1965 in this cause.

C. This notice of appeal.

III.

The following questions are presented by this appeal:

1. Is it repugnant to the U. S. Constitution for the highest court of New Jersey, by its own order, to undertake an investigation of an alleged law violation; to act as prosecutor of said law violation; to supply the principal witnesses for the trial; and then, as the tribunal of last resort within the state, review the appeal of convicted defendants who were subjects of the original court-initiated investigation?

2. Does a New Jersey State Statute violate the 14th Amendment when said statute requires holders of public office to give testimony about matters relating to their office and incriminate themselves where, if the office holders refuse to testify, they thereby automaticaly forfeit their office and pension rights and thereafter are permanently ineligible for election or appointment to any public office in the state?

3. Does the 14th Amendment prohibit the admission in evidence during a criminal trial of statements obtained under a state statute which compels a defendant police officer to make the statement or be discharged from his employment?

Angelo D. Malandra, Esq., Attorney for Appellants, 702 Market St., Camden, N.J. 08102;

Daniel L. O'Connor, Esq., 839—17th St., N.W., Washington 6, D.C., Co-Counsel.

Dated: May 25, 1965.

[fol. 713] Proofs of Service (omitted in printing).

[fol. 714] [File endorsement omitted]

[fol. 715] Clerk's Certificate to foregoing transcript (omitted in printing).

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 13(2)

EDWARD J. GARRITY, ET AL., APPELLANTS,

vs.

NEW JERSEY.

APPEAL FROM THE SUPREME COURT OF NEW JERSEY

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IN THE SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

Docket No. A-327-63

Criminal Action on Appeal from Camden County Court.

Sat below: Anthony C. Mitchell, J. C. C. and a Jury.

STATE OF NEW JERSEY, Respondent,

vs.

JAMES HOLROYD, EUGENE D. ELWELL and DONALD MURRAY, Defendants-Appellants.

Appellants' Appendix

[fol. 1]

APPENDIX

INDICTMENT
No. 339-62

The Grand Jurors of the State of New Jersey, for the County of Camden upon their oaths, Present That James Holroyd, Eugene D. Elwell and Donald Murray, all being, then and there duly qualified police officers of the Borough of Barrington, County of Camden aforesaid, and said James Holroyd also being a Deputy Violations Clerk in the Municipal Court of said borough aforesaid and the said Eugene D. Elwell also being a Violations Clerk during the year 1959 and Deputy Violations Clerk in the year 1960 in said court, and the said Donald Murray also being Deputy Violations Clerk during the year 1959 and Violation Clerk during the year 1960 in said court, and all, in said capacities, having the authority to exercise certain functions enumerated in R.R. 8:10-10(a) among which was the right "to accept . . . payment of fines and costs in traffic offenses . . . , and within the jurisdiction of this court during the period beginning January 1, 1959

and up to and including June 29, 1961, did commit the crime of conspiracy in that, then and there, they unlawfully conspired together to pervert and obstruct the due administration of the motor vehicle traffic laws of this state in that they unlawfully, knowingly and corruptly did agree to dispose of certain traffic offense cases commonly designated as "operating offenses", such as "speeding", R.S. 39:4-98, by altering and falsifying the summons and complaint made by the arresting officer or officers, as the case might be, thereby changing the nature of the offense aforesaid to one commonly designated as a "standing offense" such as "borough parking in a prohibited area" in violation of lawful regulations provided by resolution or ordinance duly adopted by municipal authority exercised under the right conferred by R.S. 39:4-197, whereby by reason of said alteration or falsification, offenders would not be [fol. 2] prosecuted under the charge first made, but, instead, would be prosecuted under the substituted charge, the practice being commonly known as "downgrading"; and in furtherance of said conspiracy agreed to require traffic offenders, as aforesaid, to pay a minimum fine and cost according to the borough Municipal Court schedule R.R. 8:10-10(b), which in the case of speeding in said borough consisted of a minimum fine for speeding of $10.00 and $5.00 for costs, which said fine and costs according to R.R. 8:10-10(b) were to "be paid to, receipted by and accounted for by the Violations Clerk"; they, nevertheless, agreed to issue receipts out of the said Municipal Court in an amount commensurate with the customary charge for parking, that is, $5.00, in satisfaction of a conviction of a charge for local parking and were also to make in the local Municipal Court Traffic Dockets an entry indicating only a payment of $5.00, thereby, and by the operation of the conspiracy to divert the sum of $10.00 unlawfully.

Overt Acts

And that in execution of the aforesaid conspiracy and to effect the object thereof, the following overt acts were done:

1. On September 15, 1959, James Holroyd, being a police officer of the Borough of Barrington, County of Camden, aforesaid, did arrest and make a complaint against one Robert Wright, charging him with exceeding the speed limit allowed in the zone in which the offense was committed, contrary to R.S. 39:4-98, said complaint bearing number 4453 issued out of the Municipal Court of said Borough of Barrington; and

On or about October 14, 1959, one Robert Wright paid by check into the Violations Bureau of said Municipal Court of the borough aforesaid, the amount of $15.00, the amount required to be paid in such case as fine and costs [fol. 3] for said violation which check was endorsed by the aforesaid Eugene D. Elwell in the name of the Borough of Barrington and deposited to the credit of said borough, and although Eugene D. Elwell as Violations Clerk had deposited said check as aforesaid to the account of the Borough of Barrington, receipt numbered 5706 issued out of said Municipal Court to said Robert Wright, dated January 8, 1960 and made by Donald Murray, Violations Clerk, in which he acknowledged receiving $5.00 in satisfaction of a conviction of said Robert Wright on a charge of "parking" and the said Donald Murray likewise on January 8, 1960 entered in the Traffic Docket a record of a payment of $5.00 by said Robert Wright in satisfaction of a fine for "parking"; and

The complaint aforesaid has been altered by striking out the numerals indicating the speed which the offender is alleged to have been driving and also striking out the numerals indicating the miles allowed per hour in the zone in which the offense was committed and by inserting in said complaint the word, "parking", and also by making a check mark in the printed part of the complaint designated "prohibited area", thereby changing the offense from one of "speeding" to one of "parking in a prohibited area".

The defendants herein have failed to account to the Municipal Court of said Borough of Barrington, or the Borough itself for the sum of $10.00 as aforesaid, contrary to

the provisions of N.J.S. 2A:98-1 and 2A:98-2 against the peace of this State, the Government and dignity of the same.

A True Bill: (illegible), Foreman.

Norman Heine, County Prosecutor.

[fol. 4]

IN THE CAMDEN COUNTY COURT

TRANSCRIPT OF TESTIMONY—May 27, 1963

Camden, New Jersey

Before: Hon. Anthony C. Mitchell, J. C. C.

APPEARANCES:

James G. Aiken, Esq., Assistant Prosecutor, For the State of New Jersey.

Joseph T. Sherman, Esq., Attorney for Defendant, Elwell.

John Gerry, Esq., Attorney for Defendants, Holroyd and Murray.

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[fol. 19] BUD M. RIGG, being first duly sworn, testifies as follows:

Direct examination:

By Mr. Aiken:

Q. Now where do you live, Mr. Rigg?
A. Levittown, New Jersey.
Q. What is your occupation or profession?
A. I am an attorney.
Q. Now in 1961, Mr. Rigg, did you have any official or public office or public job?

A. Yes, I was Deputy Attorney General for the State of New Jersey.

Q. Now just tell us briefly what a Deputy Attorney General is, will you Mr. Rigg?

A. Well, a Deputy Attorney General essentially is an aid or an assistor, to the Attorney General with specific assignments under that department.

Q. And in connection with your job as an assistant or Deputy to the Attorney General, during 1961, what, if anything, did you do with the municipal court and police department of the Borough of Barrington?

A. On June the 30th, 1961, the Supreme Court issued an order directing the Attorney General to conduct an investigation in the Borough of Barrington pertaining to the [fol. 20] handling of traffic summonses of the municipal court as well as investigating any persons connected with that court. Pursuant to that order the Attorney General assigned that task to me.

Q. Now, as the Deputy Attorney General and as I understand by the Attorney General to investigate these matters relating to traffic tickets in the Borough of Barrington, what, if anything, did you receive from Mr. McGinnis, who has just testified.

A. Among other things, I received a number of summonses which had apparently been issued in the Borough of Barrington and were subject to the jurisdiction of that municipal court.

Q. Now, will you look at the ticket—

A. May I just say in addition to summonses were also duplicated copies, complaints, receipts and alike.

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[fol. 60]

COLLOQUY AND ARGUMENT RE ADMISSIBILITY OF STATEMENTS

Mr. Aiken: Your Honor, at this time I am prepared to [fol. 61] proceed with the statements.

The Court: May we have a side bar conference for a minute. The jury may remain in the box.

(Side bar conference held in chambers, not on the record.)

The Court: Now, ladies and gentlemen of the jury, at this stage of the proceedings, there is a matter which is purely legal in character, and has already been explained to you, wherever possible all legal matters are disposed of out of the presence of the jury, the reason being of course, that we do not want to confuse the jury at this point of the case with what the law is. At the end of the case, the Court will charge you as to the law. Whether you agree or disagree with that law, under the oath that you take as jurors, you are bound to accept the interpretation of the court as to what the law is. I know that this is going to be a little bit lengthy, and there is no sense of sending you back to the jury room. I would estimate that it would take the better part of perhaps an hour, which will run into the lunch period, so that as far as you are concerned, I am going to excuse you until two o'clock so at two o'clock, please come back to room 326. Spectators remain seated until the jury leaves. You may leave.

(Jury excused.)

(The following transpires out of the presence of the jury.)

The Court: Now, you have some statements.

Mr. Aiken: Yes, I have a copy of each statement.

The Court: Now, gentlemen, we will go into the examinations of the various statements. One, I believe, was taken in Barrington and the other one being taken here in the Camden County Prosecutor's office, one having been taken by Deputy Attorney General Bud Rigg and the other having been taken by the first assistant prosecutor, Sidney Kaplan. What the court will do, I think, is follow the same procedure as we did in the other case, we will now go over

[fol. 62] the statements of the various individuals who gave them. Counsel will have a perfect right to object to put upon the record anything in the nature of an objection or arguments or reason for the objection and then if it is not agreed between state and counsel, the court will of course rule upon the objection and of course if the counsel is satisfied with the ruling of the court, that likewise will be noted on the record and objection on behalf of each of the defendants through their attorneys. Subsequently, if the statements are admissable as evidential or portions of the statements because in some of them there are portions that are not admissible, Mr. Garifo, who is the official court stenographer, a certified court stenographer, will read the statements to the jury. In the event that there is an argument as to what is and what is not in the statements, the court's copy will govern. Now is there anything that is not understood as far as counsel is concerned as to that particular point. All right. I think maybe what we will do, because I will erase these various notations here that I have made because I felt for example there is a statement made by Mr. Elwell, of course, that already was read once in the other case so I think to save the possibility of confusion, I will erase the notations that have been made in here and put notations instead. I may not be able to get it one hundred per cent clean, but of course, it will show evidence of the erasure anyway and I think under those circumstances, Mr. Garifo should have no difficulty in reading them if they are permitted to be read. I am directing your attention then, gentlemen, to the statement taken in Barrington in the municipal building on Thursday, November the 2nd, 1961, in the presence of Bud M. Rigg as Deputy Attorney General, John Corbin, State Police of New Jersey, John S. Gerry, Esquire, from the Borough's police department and the matter is reported by Lawrence Garifo, [fol. 63] Certified Shorthand Reporter of 158 Market Street, Camden, New Jersey. The other statement is by Mr. Elwell and I am starting at page 3. "Eugene D. Elwell,

having been sworn, was examined and testified as follows: By Mr. Rigg: Question, Mr. Elwell, as you know, I have been directed by a Supreme Court order dated the 30th of June, 1961, to investigate irregularities in the handling of motor vehicle matters in the municipal court of Barrington, together with the conduct of all persons connected with this court and specifically the police department. It is for this reason I have asked you here today so I could ask you certain questions pertaining to those investigations. I want to advise you that anything you say to me must be of course of your own free will and of course without any threats, coercion, or promises or reward. I advise you further that you do have as every citizen has under the law of New Jersey, a privilege to refuse to disclose any matter which may tend to incriminate you and further with full knowledge of this, you make this disclosure pertaining to this investgation, you thereby waive this right of privilege in relation to any phase of this investigation which might involve you. However, this privilege is somewhat limited under our laws to the extent that a police officer who under oath, during investigation, fails to testify or answer a specific question, does thereby jeopardize his position on the force and may be removed under the proper proceedings. Understanding that, do you wish to proceed this morning and answer the questions which I intend to put to you? Answer, I do, sir."

Mr. Sherman: Now, Your Honor, at this time with the permission of the court, I would like to object to that part on page 4 where in the question put by Mr. Kaplan was that this privilege is somewhat limited.

The Court: No, I believe this is by Mr. Rigg.

Mr. Sherman: I'm sorry, Mr. Rigg, that this privilege is limited under our laws to the extent that a police officer [fol. 64] under oath during investigations fails to testify or answer a specific question does thereby jeopardize his position on the force and may be removed by proper proceedings. My objection is that it violates the constitutional

provision and in fact, it takes away the previous statement by the prosecutor by Mr. Rigg that he does not have to answer anything which might incriminate him. The force and effect by this question, it practically puts the person in a position where he answers something, it may incriminate him, when he has no choice about it.

The Court: Do you wish to render an additional objection?

Mr. Gerry: I do, Your Honor please, on behalf of the co-defendants, Holroyd and Murray, I would like to raise the same objection of the constitutionality of this statute was referred to by Mr. Rigg to which I feel quite clearly, the defendants of course, were under duress and not admissable into evidence as a voluntary statement. Of course I will reserve that objection with the right to object to any statements made by the defendant, Elwell so far as they apply to the other two defendants whom I represent.

The Court: All right, now the court feels that under the circumstances the ruling on the court on that matter is this, that of course, it is directed to public officials and of course, public officials make up a good sized portion of society's law. I understand public officials, it amounts to or categorizes those people who in any way are connected with or have certain duties, obligations and responsibilities to the public. For example, Judges, Policemen, various types state police, Federal Bureau of Investigation and anyone else and my own thinking in the matter is that many a person makes applications or takes the necessary examination for that position, they are deemed to be informed or to personally know and it is their obligation at [fol. 65] least in my opinion, to make themselves acquainted with the rules and regulations concerning the position itself. It is again my thought in this matter that where a person wants to be a police officer, directing the reasoning specifically to police officers, that when he takes the examination and accepts the job, he also accepts the limitations as set forth in this particular statute and waives

that part of his constitutional rights. He still, of course, has the right to make the choice as was explained to him in here. He could refuse to answer this question, it would be tentative if he did so, I agree, but by the same token, that is one of the limitations that he willingly accepted and when he took the position, he did so from the very beginning. I will go one step further and will express myself as being of the opinion that it was indeed Mr. Rigg's obligation to explain to him the statute, because having not done so, it may very well have been that it would not have been a full and satisfactory explanation of his rights and that he could very well come into court and say that because it had not been explained to him, it was not a full and fair statement by interrogating officer before he did make the statement itself. The objection however, on the part of both of the attorneys, is denied. The reasoning on the part of the court concerning the motion made may be entered upon the record on behalf of all the defendants.

Mr. Sherman: Now, Your Honor, my further objection is based upon the fact that the testimony taken of Mr. Elwell and questions and answers directed to Mr. Elwell, in the capacity of one, as a police officer, and one as a violations clerk, and assuming the rule to be as Your Honor now stated it, that he felt it should be admitted as far as a police officer is concerned, I maintain that insofar as the violations clerk is concerned, there is no such ruling and therefore any testimony which he gave Mr. Elwell as a violations clerk based upon this theory of what is told to [fol. 66] him in reference to police officer, should not be admitted and should not be read and it would be improper.

The Court: Overrule the objection. I think as far as he is concerned, as status as violations clerk, he is likewise a public officer. He is carrying out duties that have to do with the administration of the court and therefore a public officer and he does fall of course, within the same provisions of the statute as an official. The motion is denied, reason of the court's conclusion on the same is entered upon

the record and objection on behalf of the defendant Mr. Elwell.

Mr. Gerry: Your Honor, please, on behalf of the defendants, Holroyd and Murray, I also object to the admission of the statements taken by Mr. Rigg of the defendant Elwell on the grounds that the statements were taken subsequent to it.

The Court: You need not argue that point. I will rule in your favor because as a practical matter this was subsequent to the final outcome of the alleged conspiracy itself, that as far as any statements by Mr. Elwell are concerned, they only bind Mr. Elwell and not bind Mr. Holroyd or Mr. Murray. Objection on that point is well taken.

Mr. Gerry: And they cannot sir, be used to establish the conspiracy itself.

The Court: Well, if they don't bind them, I don't see very well how they could so that objection or that explanation concerning the feeling of the court is the same in the other cases, it only binds the one that took it because by this time the conspiracy was all over, finished, and done with and as I understand the law after the person's completed, it is only binding upon the person making the statement. I will likewise instruct the jury to that effect and if these things are that the statements of the individual defendants are only binding upon the individual defendant, as far as the reading from these records is concerned. All [fol. 67] right, anything further gentlemen? I will continue to read.

"Question, You are a police officer in the Borough of Barrington? Answer, Yes sir. Question, How long? Answer, Nine and a half years. Question, Do you have any rating other than patrolman? Answer, No sir. Question, Have you during the nine and a half years specifically during the years '58, '59, and '60 and '61 ever acted as violations clerk of the municipal court, officer? Answer, Yes sir."

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[fol. 137] The Court: All right, reading from page 103 of the statement. "Donald Murray, having been duly sworn, was examined and testified as follows: By Mr. Rigg: Question, Mr. Murray, as you know, I am working a [fol. 138] Supreme Court order issued on the 30th day of June, 1961, directing me to investigate certain irregularities in the handling of municipal traffic matters in the court, and by various members of the police department in Barrington. It is pursuant to that order that I ask you to come in here today, and ask you questions. Before I do, I want to advise you that anything you say must be voluntary, and of your own free will, without any coercion or threat or promise of reward. I want to advise you also anything you say may be used against you or any person in any subsequent criminal proceeding in our courts in New Jersey. You do have a privilege to refuse to disclose any matters which you feel would tend to incriminate you. However, being aware of that, and if you make a disclosure, you waive that privilege or right in relation to any matters pertaining to this investigation, there is one limitation of your privilege to the event that a proceeding may be brought against you under the laws of our state as a police officer, to have you removed from your office if you refuse to answer any questions put to you pertaining to your official duties. Understanding this, Mr. Murray, do you wish to proceed this morning and answer the questions I put to you? Answer, Yes. Question, How long have you been an officer of the Borough of Barrington? Answer, Since 1957, May. Question, Have you ever served as court clerk or violations clerk? Answer, Yes.

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[fol. 148] Mr. Aiken: There is no specific reference to the other two defendants in the matter that follows in Mr. Murray's statement, so we go over to Mr. Holroyd's statement on page 181.

The Court: Continuing, "Lieutenant James H. Holroyd, having been duly sworn, was examined and testified as

follows: By Mr. Rigg: Question, Lieutenant, under a Supreme Court order dated the 30th of June, 1961, I have [fol. 149] been directed to investigate irregularities in the handling of municipal court vehicle matters in the Borough of Barrington, and how they have been handled by the court, and local police departments. As a result, I have asked you to come in here today so that I may put questions to you. Answer, Yes. Question, I want you to realize fully, however, any answers you give must be voluntary, without any coercion, threat, or promise of reward, and those answers may be used against you or any other person. You have a privilege to refuse to disclose any matters which might tend to incriminate you, however if you make such a disclosure you thereby waive your right or privilege in relation to any phase of this investigation in the future. Under our laws, as a police officer, you are subject to a statute which provides however, if you exercise this right or privilege, a proceeding may be instituted against you to have you removed from office. Answer, Yes. Question, Knowing all this, you are willing to proceed? Answer, Yes. Question, How long have you been in the department? Answer, Ten years. Question, How long have you been a lieutenant? Answer, Since '58, December of '58. Question, You are undoubtedly familiar with the problems here, the practice of altering motor vehicle summonses and complaints? Answer, Yes I am.

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[fol. 154] Mr. Sherman: I have a few objections on that, shall I raise the objections now or wait.

The Court: Well, I can't pass on them until I see what is in it, so you better hold your fire until I start to read and then if at any time you want me to stop—

Mr. Sherman: Well, Your Honor, one of my objections should come before you start to read because it is based on the jurisdiction of the Prosecutor's office, so I may make my objection at this time.

The Court: All right, you may.

Mr. Sherman: Your Honor, as I understand the testimony of Mr. Rigg himself, there is a Supreme Court order directing him as a Deputy Attorney General to make an investigation of the Barrington, of the municipal court, now we have nothing on record to indicate under what authority the Prosecutor's office came into this picture. This was solely investigated by Mr. Rigg, and then suddenly it stops somewheres in the Prosecutor's office, takes charge of it, and starts in asking the same questions, apparently which had already been asked of them before. Now, I am objecting to any of the testimony which was given by this defendant, Mr. Elwell, to the Prosecutor's office on the theory, first if the Prosecutor's office had absolutely no power, no authority, to make their investigation of this type, and that since the investigation came originally from the Supreme Court that the Prosecutor's office would not usurp the power of the Supreme Court which is directed to a court itself, which the Supreme Court has a right to do, and that therefore, the Prosecutor's office could not have the authority from anyone or under their rights under the Prosecutor's office to ask the questions of these various people who were not defendants at that time, and [fol. 155] then present their own cases to the Grand Jury based on the questions which they asked these defendants, and then seek an indictment on the testimony actually submitted by the Prosecutor and not just on the testimony submitted by the people who were giving the answers to the questions.

The Court: No, I think we have here the same situation that we had as far as Mr. Rigg was concerned. I don't remember correctly, whether there was definite testimony from Mr. Rigg that he had resigned before the investigation had been completed, that testimony was in another case, so I can't use the testimony of course, of another case to pass upon this here, but I do have a strong recollection of what Mr. Kaplan got on the stand and testified, that Mr. Kaplan did testify that he was of the Prosecutor's office

and that it was ordered I think by the Supreme Court to continue with the investigation which apparently Mr. Rigg had not completed. Now again, I don't remember any cross examination of Mr. Kaplan, or his authority and alike, when those questions were asked him, so for the purpose of this, it would seem to me that I am bound to consider this the only testimony in the case so far that he had the right to do. I would assume there may be some type of an order of it on record which was not produced in court. Again, may I say, my thought is that on cross examination if you felt that the order was illegal or if an order had never been issued, so to do on the part of the state, to show that he did have the right so to do, he says that he had the right, and as I said, that is the only question before the court at the present time, may I say this, do you know whether or not there is an order on record, Jim?

Mr. Aiken: I have never seen it, Your Honor, I don't know where it is.

Mr. Sherman: There is nothing in it, if you notice, Your Honor, on this, or when Mr. Rigg tells each one [fol. 156] of these individuals right from the beginning that he has been appointed by the court to make the investigation, but you notice in the Prosecutor's questions and answers, he does not say to any of them that I have been appointed to take over this. He just says now, let's go right on where we left off, where Mr. Rigg left off, and that seems to be the basis of that. He says now, the caption of these proceedings I just read is a matter in which you have testified in a previous statement.

The Court: Of course, the theory therefore on that would seem to me, Mr. Sherman, was this was merely continuing the place of Mr. Rigg, who from at least one of the previous cases I know resigned before the investigation was complete. Now, granted, he didn't tell him that he resigned, but—

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[fol. 161] The Court: Now gentlemen, we are back on page 2 of the statement taken from Eugene D. Elwell. The person asking the questions being Sidney Kaplan, the date being Friday the 28th of December, 1962, the place being Camden County Prosecutor's office, and those present being Sidney Kaplan, Esq., Assistant Prosecutor, Captain Philip J. Large, of the Prosecutor's office, and Detective John Corbin of the New Jersey State Police. Page 2.

"Eugene D. Elwell, sworn, By Mr. Kaplan: Ques-
[fol. 162] tion, Now, the caption of this proceeding, which I just read is a matter in which you have testified on a previous date, I believe November 2nd, 1961, and which Bud Rigg a Deputy Attorney General interrogated you and other officers of the Barrington Police Force. Answer, Yes. Question, Your name is Eugene D. Elwell? Answer, Yes. Question, And you are a member of the Barrington Police Force? Answer, Yes. Question, And your rating? Answer, Patrolman. Question, How long have you been a member of the force? Answer, Ten and a half years, eleven years in February. Question, We have been following a certain pattern in this interrogation, and we will get to that. But, before we do, I want to advise you anything you say to me must be of your own free will, and without being the result of any threats, coercion, or promise of reward, and I advise you further you do have a right as any other citizen of New Jersey has, under our laws, the privilege to refuse to disclose any matter which may tend to incriminate you, and further with full knowledge of this right, if you make a disclosure pertaining to this investigation, you thereby waive this right of privilege with reference to any phase of this investigation that might involve you. Do you understand that? Answer, Yes sir. Question, Understanding that, you are willing to be interrogated? Answer, Yes sir.

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[fol. 174] The Court: All right, stop here and that's the end of the Elwell statement. Gentlemen, we'll take our noon recess at this time.

(Noon recess)

The Court: Well, the next statement that is before me is Mr. Holroyd's. Supposing we handle that one. Prosecutor's office, Camden, present Sidney Kaplan, Assistant Prosecutor, Captain Philip J. Large, County Detective, Detective John Corbin of the State Police. Statement of James H. Holroyd, given in the presence of each of the persons.

"James H. Holroyd, sworn, By Mr. Kaplan: Ques-
[fol. 175] tion, Your name is. Answer, James Holroyd. Question, And you are a member of the Barrington Police Force? Answer, Yes. Question, What capacity? Answer, Lieutenant. Question, I assume you are familiar with the purpose of our being here this morning. It is in connection with an order of the Supreme Court directing an investigation into the handling of traffic tickets in Barrington. Answer, Yes I am. Question, And you have testified before in this matter? Answer, Before Mr. Rigg. Question, The Deputy Attorney General? Answer, Yes. Question, I am going to ask you some questions, but before I do, I want to advise you anything you say must be of course of your own free will, and without any threats, coercion, promises or reward, and I advise you further that you have as has every citizen under the laws of New Jersey, the privilege of refusing to disclose any matter which might incriminate you, and further with the full knowledge of this right, if you make any disclosures pertaining to this investigation, you waive that right of privilege with reference to any phase of the investigation which might involve you. With that understanding, are you ready to proceed? Answer, Yes. Question, For the sake of expediency, and so that this doesn't take up too much time, we have adopted a procedure where we simply ask you questions, and you will answer them, and generally they pertain to particular tickets, and when I use the term ticket, I mean the complaint and summons and whatever else becomes a part of the assembly.

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[fol. 183] The Court: Well, again, lest there be any misunderstanding, Counsel didn't make any specific objections, the same objections as previously made in the other statements will carry over on all of these here as far as the statement of Mr. Holroyd is concerned.

Now, the next statement I have before me, taken on Wednesday, December the 19th, 1962, Prosecutor's office, Camden, New Jersey, present is Sidney Kaplan, Esq., Assistant Prosecutor, Philip J. Large, Camden County Detective Bureau, Detective John Corbin of the New Jersey State Police and of course Mr. Donald Murray.

"Donald Murray, sworn, By Mr. Kaplan: Question, Your full name? Answer, Donald Francis Murray. Question, You are a police officer in Barrington? Answer, Yes. Question, Any special title? Answer, Patrolman. Question, On a previous occasion, you did give some testimony before Bud Rigg, a Deputy Attorney General? Answer, Yes sir. Question, That was in the same investigation? Answer, Yes sir. Question, And at that time he advised you of your rights and I will repeat them for the record. I want to advise you anything you say to me must be of course, of your own free will, and of course, without any threats, coercion or promise of reward. I'll advise you further that you do have, as every citizen has under the laws of New Jersey, the privilege to refuse to disclose any matter which may tend to incriminate you, and further with full knowledge of this, if you make any disclosures pertaining to this investigation, you thereby waive this right of privilege with respect to this investigation which might involve you. Are you willing to waive any immunity and proceed to the [fol. 184] questioning. Answer, Yes sir. Question, I want to ask you some questions about certain traffic summonses and complaints, and all that sort of thing that you were part of, either as the complaining witness or borough clerk.

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[fol. 199]

IN THE CAMDEN COUNTY COURT

June 3, 1963
Camden, New Jersey

LAWRENCE GARIFO, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Mr. Garifo, what is your professional occupation?

A. Shorthand Reporter.

Q. And how long have you been a shorthand reporter?

A. Approximately 14 years.

Q. Are you certified to take testimony in the courts of New Jersey?

A. Yes.

Q. Now, I understand that on November the 2nd, 1961, you took certain statements from each of the three defendants in this case, is that correct?

A. Yes, sir.

Q. Can you tell us where you took those statements, who did the questioning, and who was present?

A. The statements were taken in Barrington, New Jersey, on Thursday, November the 2nd, 1961, interrogated was Bud M. Rigg, Deputy Attorney General of the State of New Jersey, also present were John Corbin, of the New Jersey State Police, and John F. Gerry, Esquire, who was present for the police department, and myself.

Q. Now, I think you know, Mr. Garifo, that the court [fol. 200] has marked certain portions of that transcript and I think you are familiar with the markings?

A. Yes sir.

Q. I wonder if you would begin to read those portions that have been marked to be read by the judge.

The Court: Before that, does counsel have any questions to ask Mr. Garifo?

Mr. Sherman: No.

Mr. Gerry: No.

The Court: I believe this is Mr. Elwell's statement first.

Mr. Aiken: Yes.

Mr. Sherman: Your Honor, may I have the right reserved to ask this witness a few questions after he has completed the reading?

The Court: Yes, you may do it either now or when he is finished. Anytime during the appearance on the stand, you have that permission.

The Witness: The statement reads as follows: "Eugene D. Elwell, having been duly sworn, was examined and testified as follows: By Mr. Rigg: Question, Mr. Elwell, as you know, I have been directed by the Supreme Court order dated the 30th of June, 1961, to investigate irregularities in the handling of motor vehicle matters in the Municipal Court of Barrington, together with the conduct of all persons connected with this Court, and specifically the police Department. It is for this reason I have asked you to be here today, so I could ask you certain questions pertaining to this investigation. I want to advise you anything you say to me must of course be of your own free will and of course without any threats, coercion, or promise of reward. I advise you further that you do have as every citizen has, under the laws of New Jersey, a privilege to refuse to disclose any matter which may tend to incriminate you, [fol. 201] and further with full knowledge of this investigation, you thereby waive this right of privilege, in relation to any phase of this investigation, which might involve you. This privilege is somewhat limited, under our laws, to the extent that a police officer who under oath during investigation, fails to testify or answer a specific question does thereby jeopardize his position on the force and may be removed under the proper proceedings. Understanding that, do you wish to proceed this morning and answer the

questions which I intend to put to you? Answer, I do, sir. Question, You are a police officer in the Borough of Barrington? Answer, Yes sir. Question, How long? Answer, Nine and a half years. Question, Do you have any rank other than patrolman? Answer, No. Question, Have you during the nine and a half years and specifically during the years 1958, '59, '60, and '61 ever acted as clerk of the municipal court? Answer, Yes sir. Question, Did you hold that post for any period of time or did you just fill in occasionally? Answer, 1959. Question, You were clerk during 1959? Answer, Yes. Question, Have you acted as clerk since then? Answer: Yes, my duties are on the desk. Question, Can you tell me generally what your duties were as clerk during 1959? Answer, Keep the records, as far as the books were concerned, court records, accept fines. Question, Make out receipts? Answer, Yes. Question, Did you make deposits? Answer, Yes sir. Question, Where did you make the deposits? Answer, Camden Trust in Runnemede. Question, I show you a book labeled Municipal Court Traffic Docket, containing entries of traffic matters showing their disposition and ask you if these entries during 1959 were made by you? Answer, Yes, sir. Question, Now then, during the same period of time in 1959, and down through the present time, that you acted as clerk, were you also active as a police officer? Answer, Yes sir. Question, And did you issue summonses during that period [fol. 202] of time? Answer, I did sir. Question, Did you personally have occasion to alter the charges in any summonses issued by you during that time? Answer, Yes. Question, Will you tell me what motivated these changes? Answer, Well, hardship cases, as such a person who would possibly receive a ticket, and find out later on, come to you, maybe hardship, money-wise or something like that, and go along and try to do the man a favor. Question, Are you giving me to understand, Mr. Elwell, that the only motivation then was hardship? Answer, Well friends, other officers. When I say friends, other officers, they might come

to me and say a certain ticket I had issued was a friend of his, and he would have a reason that he would want to see the ticket changed, and ask me if it was all right by me. And, I would go along with the officer on it. Question, Were there any reasons for changing these alterations other than hardship or friends of fellow officers in the department? Answer, No sir. Question, They are the only two reasons? Answer, As far as I can remember. Question, Can you tell in relation to these alterations which officers have contacted you? Answer, I would say all officers of the department at one time or another, the time I have been on the police department, I'd say just about every member of the police force. Question, Have you been contacted by members of other police departments as to alterations? Answer, That's possible. I don't recall any definite particular one, but it's possible. I would work along with other police departments very closely around here. Question, What do you mean you work along? Answer, Within our police duties and all that, we're connected very close. Question, I am specifically referring to alterations of summonses. Do you work closely along with them on that? Answer, I can't definitely say any particular case where I remember actually changing one for another, an officer from another department. Question, [fol. 203] In relation to summonses issued by other officers within this department in Barrington, have you asked any other officers to alter summonses for friends of yours or hardship cases that you knew about? Answer, That would be possible. I imagine I did, I couldn't actually state any particular one. I can't remember one definitely coming to me for a favor, as far as seeing other officers. Question, Now, then, during 1959 and any time before or after that, that you were acting as clerk, how would you handle the alterations so far as the reflection on the alterations in the docket book? Answer, In the docket book? Question, Yes. Answer, Well, as violations clerk, the summons was altered to parking, it would be entered in the docket book as a parking violation. Question, Initially, it would be entered,

and I am specifically referring to the category offense, would you initially put parking? Answer, Yes, parking would be marked the same way. Question, I understand then you did not enter the ticket with the defendant's name, and the offense, until after disposition had been accomplished, is that correct? Answer, That's correct. Question, To your knowledge, have you ever altered a traffic summons or asked one of the other officers to alter a summons without the defendant's knowledge? Answer, No. Question, It was always at the behest of the defendant? Answer, Yes, definitely. Question, Did you ever receive any consideration or thing of value for doing these alterations or requests? Answer, No sir, definitely not."

The Witness: That is the end of Mr. Elwell's statement.

Mr. Aiken: Will you go on to Mr. Murray's next, page 130.

The Court: Excuse me, did you want to ask any questions, Mr. Sherman?

Mr. Sherman: I could ask the questions at the end, it will be a general question.

[fol. 204] The Court: All right. In other words, you prefer to wait until everything is read out of this book. You may continue.

The Witness: "Donald Murray, having been duly sworn, was examined and testified as follows: By Mr. Rigg: Question, Mr. Murray, as you know, I am working a Supreme Court order issued on the 30th day of June, 1961, directing me to investigate certain irregularities in the handling of municipal traffic matters in the court, and by various members of the police department in Barrington. It is pursuant to that order that I ask you to come in here today, and ask you questions. Before I do, I want to advise you that anything you say must be voluntary, and of your own free will, without any coercion or threat or promise of reward. I want to advise you also anything you say may be used against you or any person in any subsequent criminal proceeding in our courts in New Jersey. You do have

a privilege to refuse to disclose any matters which you feel would tend to incriminate you. However, being aware of that, and if you make a disclosure, you waive that privilege or right in relation to any matters pertaining to this investigation, there is one limitation of your privilege to the event that a proceeding may be brought against you under the laws of our state as a police officer, to have you removed from office if you refuse to answer my questions put to you pertaining to your official duties. Understanding this, Mr. Murray, do you wish to proceed this morning and answer the questions I put to you? Answer, Yes. Question, How long have you been an officer of the Borough of Barrington? Answer, Since 1957, May. Question, Have you ever served as court clerk or violations clerk? Answer, Yes. Question, When? Answer, 1960, I was violations clerk. Question, And court clerk also? Answer, Yes. Question, It is a combined position, is it not? Answer, That is correct. [fol. 205] Question, And during the course of this year, and 1959, would you act as clerk if you were on duty at the time someone came in? Answer, That is right. Question, And issue a receipt? Answer, Yes. Question, You are aware, I am sure, officer, of the practice here by various members of your police department of altering summonses and complaints and motor vehicle matters. Answer, Yes. Question, Have you engaged in that practice yourself? Answer, Yes. Question, What would motivate you, Mr. Murray, in altering a complaint? Answer, What do you mean? Question, Why would you do it? Answer, Why would I do it, someone came to me with maybe a hardship or something of that nature, where it meant a man's livelihood or something of that nature, I would consider it. Question, You would do it if the conviction of the offense originally charged would take away his livelihood? Answer, Yes. Question, Would you do it for any other reason? Answer, Not specifically. Question, That is the only reason you ever altered a summons? Answer, There may be other reasons. Question, Such as? Answer, I can't recall what

the reasons would be. Question, Would you do it on the basis of friendship? Answer, Possibly. Question, If you had inadvertently issued a summons to a friend of yours, you would thereafter alter if he prevailed upon you to do so? Answer, Possibly. Question, Would you alter a summons if a friend of yours contacted you and said a friend of his received a summons by you? Answer, That is possible. Question, Have you ever been contacted by members of other police departments to alter summonses? Answer, That is possible. Question, Have you? Answer, I couldn't say definitely, sir, for any police department, I don't know. Question, You don't know whether you have ever been contacted, you don't recall ever being contacted by a police officer from another department? Answer, I was contacted but I can't specifically it was John Doe. Question, You [fol. 206] can't recall specifically this happening? Answer, It has happened. Question, It has happened? Answer, Yes. Question, Have you been contacted by any members of the governing body here within Barrington? Answer, No. Question, Any employee within the municipal government? Answer, No sir. Question, Never? Answer, Never. Question, On any case? Answer, No sir. Question, Ever receive any thing of value or any reward or any gift? Answer, No sir. Question, For altering summonses, have you ever altered a summons without the defendant's knowledge? Answer, No sir. Question, I have here a group of summonses apparently issued by you, Mr. Murray, which again have apparently been altered. What I would like to do, if you will, is to have you go over each one of these and tell me what the particular hardship was, or what the surrounding circumstances were which prompted you to alter these summonses or at least consent to their alteration by someone else? Answer, Yes."

The Witness: That is the end of Mr. Murray's statment.

Mr. Aiken: Proceed now to Mr. Holroyd's statement, page 118.

The Witness: "James D. Holroyd, having been duly sworn, was examined and testified as follows: By Mr.

Rigg: Question, All right, under a Supreme Court order dated the 20th of June, 1961, I have been directed to investigate irregularities in the handling of municipal court vehicle matters in the Borough of Barrington, and how they have been handled by the court, and local police departments. As a result, I have asked you to come in here today so that I may put questions to you. Answer, Yes. Question, I want you to realize fully, however, any answers you give must be voluntary, without any coercion, threat, or promise of reward, and those answers may be used against you or any other person. You have a privilege to [fol. 207] refuse to disclose any matters which might tend to incriminate you, however if you make such a disclosure you thereby waive your right or privilege in relation to any phase of this investigation in the future. Under our laws, as a police officer, you are subject to a statute which provides however, if you exercise this right or privilege, a proceeding may be instituted against you to have you removed from office. Answer, Yes. Question, Knowing all of this, you are willing to proceed? Answer, Yes. Question, How long have you been in the department? Answer, Ten years. Question, How long have you been a lieutenant? Answer, Since '58, December of '58. Question, You are undoubtedly familiar with the problems here, the practice of altering motor vehicle summonses and complaints? Answer, Yes I am. Question, By the various members of the department? Answer, Yes. Question, I assume you have engaged in this practice yourself? Answer, Yes I did. Question, Am I correct in my understanding that in any relation to any summonses originally issued by you, which may have been altered by another officer, this would not have been done without clearing you first? Answer, He had to. Question, That was the practice? Answer, Yes. Question, Was this practice with you or at the chief's direction? Answer, No sir, it was at nobody's direction. If a summons was issued, the man came to you and would ask you, the chief would know nothing about it at all. He didn't have to be informed

about this. Question, Except in those matters he may come to you himself and in those particular situation? Answer, Yes sir, right. Question, Can you tell me, Lieutenant, what would prompt you as an officer and as a Lieutenant in the police department to engage in this practice of altering summonses? Answer, I have done it for friends, personal friends, hardship cases, and I didn't think there was too [fol. 208] much harm in it for the fact at the time the administrator of the courts sent his fellow down here. Question, which fellow is that? Answer, Well, I don't know who the fellow is, I just hear the other fellows talking, a fellow came down here, I don't know when it was, but he had seen this practice going on. Question, It's a very interesting thing, one more chap, maybe he is the fellow who is telling this to everyone, everyone who has come in here is telling me and when I ask you who told him who had seen it, none of them know who told them. It must be Standish. When you say you would alter these for friends, would they be your own summonses as well as summonses issued by other officers? Answer, Other officers, I would go to them, the issue the summonses, I would go to the other officers and ask them and if they said all right, I would go along. Question, You would tell the other officers this would be a friend of yours? Answer, I wouldn't tell the fellow that wrote the summons, there may be another fellow— Question, A defendant may have a friend who is a friend of yours? Answer, That is right. Question, Would that be the only motivation, just a friendship, down through the chain, or would there be some hardship involved too? Answer, According to the circumstances, on the ticket. Question, Was there any occasions say speeding changed to parking, was there any cases where it was just friendship or would it take a little more persuasiveness than a friendship? Answer, I couldn't give you the actual circumstances. Question, Suppose you and I were close friends and you gave Detective Corbin a summons, and I came to you, Detective Corbin is a close friend of mine, would you give him a break on it, would you

do that, forgetting who we are for a minute or would I have to say Detective Corbin is married with five children, he has a job, he is going to lose his license. Answer, That would be more or less the line that we used to get, to the extent a friend would call me, he would say that the fellow [fol. 209] may be up against it, or his children, he needs his driver's license and went along. Question, So it wasn't friendship, the friendship happened to be the method of connection or contact, but it was hardship? Answer, And friendship. Question, Would it be for friendship, would you do it for a friend without any hardship involved? Answer, If he was a very good friend, I imagine I would. Question, And you would do it then for a defendant, you did not know, if he were a friend of a very good friend, is that correct? Answer, Well, possibly. Question, Did you ever receive any gifts or rewards for this activity? Answer, No sir. Question, Do you know whether any of the other officers have? Answer, Not to my knowledge. Question, What did the judge think of this practice? Answer, To be truthful, I don't know whether he is aware of it or not. Question, Never said anything to you about it? Answer, No sir, he did not. Question, What I would like to do, Lieutenant, is go over the summonses which I have here, which have been issued by you and subsequently apparently altered and have you explain to me just what the circumstances were in relation to each one. Answer, All right. Question, I show you summons and complaint number 4453, issued on September, it looks like 15, maybe 13, 1959, to R. Wright, charging Mr. Wright with speeding, which charge was changed to parking in prohibited area. Why was that one changed? Answer, I can't recall it. Question, Can you tell by looking at it whether you changed it? Answer, I don't think so, it is possible I may have. Question, Why don't you think so, Lieutenant, what is it? Answer, That pointed before, I can't recall the case, it's been 1959. Question, If you changed it yourself, do you think you would know? Answer, I don't know, it's been two

years ago. Question, Were there that many involved? Answer, I don't know. Question, Have you altered so many or participated in the alteration of so many, you don't re-[fol. 210] member? Answer, No, that is not it, it is two years ago. Question, You make a practice or have you on occasion, when you stop somebody for speeding, to tell them how much the fine is so they can mail it in? Answer, No."

The Witness: That is the end of Lieutenant Holroyd's statement.

Cross examination.

By Mr. Sherman:

Q. The witnesses were examined individually and separately, is that correct, to your knowledge?

A. That is right.

Q. And taking the testimony of Mr. Elwell, you read from page 3, I believe, to page 9, inclusive. Would you look on your record there, and tell the jury how many pages of testimony there is for Mr. Elwell?

A. 33 complete pages, and 2 lines on page 34.

Q. That's all. Thank you.

Cross examination.

By Mr. Gerry:

Q. Mr. Garifo, did you say that these statements were taken not in the presence of the other defendants in each case?

A. That's right.

Q. Taken separately?

A. Yes.

Q. Have you similar records of the number of pages that were involved in the full and complete statements taken of Officer Murray and Lieutenant Holroyd?

A. You want the total of the three?

Q. No, the total of each one.

A. Well, Mr. Elwell was 33 pages and 2 lines, Mr. Murray was approximately 32 pages, and Lieutenant Holroyd was approximately 19 pages.

Q. Now, of the 19 pages of the statement taken of Lieutenant Holroyd, how many pages did you actually read?

A. Approximately 7.

[fol. 211] Q. And of the 32 pages of Officer Murray's statement, how many pages did you read into evidence?

A. Five and a half.

Cross examination.

By Mr. Sherman:

Q. How many pages are there in this entire book from which you are reading?

A. Allowing for half pages, at the end of certain witnesses, there is approximately 245 pages.

Q. And that would include statements of other people, and other officers, beside the three which are on trial today, is that correct?

A. That's right.

Q. So that out of an approximate total of 84 pages, of the three, a total of 22 pages or so was read?

A. That's correct.

Mr. Aiken: Mr. Garifo, statements of how many offices were taken on that day by Mr. Rigg?

The Witness: Nine, including the three defendants.

Mr. Aiken: Now, I understand also that at a later date your partner, Mr. Albert, took certain statements from the three defendants, is that correct?

A. Yes.

Mr. Aiken: And I believe that the Court has those statements marked similarly, in relation to the three defendants, and I would ask you to read those statements starting with Mr. Elwell's.

The Witness: This statement of Eugene D. Elwell, was taken on Friday, September 28, 1962 in the Prosecutor's office in the courthouse, Camden, New Jersey. Present, Sidney Kaplan, Esq., Assistant Prosecutor, Captain Philip J. [fol. 212] Large, Detective John Corbin and Mr. Albert.

"Eugene D. Elwell, sworn, By Mr. Kaplan: Question, Now, the caption of this proceeding which I just read is a matter in which you have testified on a previous date, I believe November 2nd, 1961, and which Bud Rigg, a Deputy Attorney General interrogated you and other officers of the Barrington Police Force. Answer, Yes. Question, Your name is Eugene D. Elwell? Answer, Yes. Question, And you are a member of the Barrington Police Force? Answer, Yes. Question, And your rating? Answer, Patrolman. Question, How long have you been a member of the force? Answer, Ten and a half years, eleven years in February. Question, We have been following a certain pattern in this interrogation, and we will get to that. But, before we do, I want to advise you anything you say to me must be of your own free will, and without being the result of any threats, coercion, or promise of reward, and I advise you further you do have a right as any other citizen of New Jersey has, under our laws, the privilege to refuse to disclose any matter which may tend to incriminate you, and further with full knowledge of this right, if you make a disclosure pertaining to this investigation, you thereby waive this right or privilege with reference to any phase of this investigation that might involve you. Do you understand that? Answer, Yes sir. Question, Understanding that, you are willing to be interrogated? Answer, Yes sir. Question, I have a few, where you were the complainant and where the receipts were taken in by someone else, and I will ask you the same question in regard to these. Number 4585, December 16th, 1959, Anthony M. Rossi, and operating offense charged specifically speeding, as evidence by the section and a check mark in the speeding block, the original speed charged and the speed allowed cannot be distin-

guished, because there has been heavy ink run over those figures, and there is evidence they were obliterated on all [fol. 213] three of the instruments that are here, being the complaint, the copy of it, this police record, and the summonses which goes to the offender. There is no evidence of how the case was disposed of, the offender's copy is attached and he has signed it in the proper place and Officer Murray issued a receipt for five dollars on a parking charge, under the date of January 8, 1960, and I ask you whether or not you made the alteration on that complaint. Answer, I can't say whether I did or not, no sir, nothing there to identify it. Question, You didn't have anything to do with the receipt? Answer, No sir. Question, None of it is in your handwriting? Answer, No, it is Officer Murray's. Question, Would you know who got your consent to make the change if you didn't make it, would you remember that? Answer, No sir, I don't know who came to me, one of the men I guess. Question, Do you know the defendant? Answer, No sir, I do not. Question, This matter was in 1959, when you were violations clerk, and terminated in January. That would be the reason Murray's name would appear? Answer, Murray was violations clerk in 1960. Question, Number 4712, February 19th, 1960, Carmen Sciatto, operating offense shown it can be distinguished under heavy inking, there had been section 98 inserted originally, and the speeding charge as in evidence from the defendant's summons, was 60 miles an hour in a 40 mile zone, there is no evidence how this matter was disposed of, there is the offender's copy of the summons in which he has signed an appearance, plea and waiver, and Murray signed a receipt for five dollars, as a fine imposed for parking, and I ask you whether or not you made the strikes and whether or not you altered that complaint? Answer, There is nothing on there I can identify as mine. Question, When you hand a summons to somebody, you detach it from your book, I assume. Answer, Yes. Question, And take out at some point, your yellow copy?

[fol. 214] Answer, Yes. Question, And you would have a copy holder? Answer, Yes. Question, And each officer would put his own copy on the complaints and summonses in the cubbyhole or through the violations clerk? Answer, He would put his own particular copy in his own cubbyhole. Question, Where would the officer put the white or blue, it looks green to me, but you said blue, where does it go? Answer, In the violations cabinet. We have a cabinet there in fact I think we put the complaint in the cubbyhole too. Question, I call your attention to the fact that the nature of the eradication or the obliteration takes a certain form, thick lines and so on, and when you follow through to a copy of the summons, you find the carbon effect as shown on the offender's copy, shows it to be the same form as that on the original. Would that have anything, if I don't make myself clear, ask me. Look at the erasure on the summons and on the defendant's copy, they seem to be the same form, while the complaint shows obliteration by ink, the offender's copy is an attachment as a carbon obliteration. Answer, That would show the three were together when they were altered. Question, You say they must have been all together? Answer, Yes. Question, You made the complaint? Answer, Yes. Question, Can you explain whether or not it was made in the field right after you had made the charge or done later at headquarters? Answer, Done later. I don't recall changing one at the scene of issuing the summons. If it is all right, I'll make a marker here, if I'm not mistaken there is no carbon used to do this, you don't use carbon paper in between. Question, You made a mark to show what happens? Answer, Yes, the three were on top of each other when they were scratched out. We don't use carbon paper. Question, You say you never make a change right in the field while patrolling? Answer, No sir. Question, There was no possibility that the change was made when the offender [fol. 215] came in to pay his fine and this was put underneath? I am only speculating that that is a possibility. An-

swer, The whole three copies has to be there when it was changed. That is the way it looks. I don't know whether the defendant was there at the time all three copies were. Question, Do you remember being asked if it was satisfactory or proper to make this change whether you consented? Answer, I don't remember, but I would have to be asked about it, which was our policy. I don't remember the summons just particularly, no. Question, Your answer is you didn't make the change? Answer, May I see it again. My answer is I couldn't identify it as mine, there is nothing there to identify it as mine. Question, Well now, if you didn't make it there, then there could've been apparently one other person who might have made it and that is Murray. Do you know whether Murray made the change? Answer, I don't know whether he did or not, I couldn't say he did. He was violations clerk at that time. Question, Yes, he was violations clerk, is that his signature, do you know? Answer, Yes. Question, This change then, must have been made at headquarters, if you didn't make it in the field, you say you didn't make it in the field. Answer, That is right. Question, And apparently, the alteration was made after the fine had been sent in. Would that follow if the offender had sent in his fine and his summons, his fine by way of cash or check, and the alteration must have been made then, wouldn't that be the facts because in this particular case, the white copy of the receipt is still present, which indicates as I understand it the defendant himself didn't appear, but sent in his fine. Answer, I'm not sure I understand you. Question, It is a long question. You have told me you never made a change in the field while you were on duty and patrolling? Answer, That is right. Question, And if the offender had come in and paid his fine either cash or check, he would've been [fol. 216] given a white receipt, wouldn't he? Answer, Generally. Question, Are there many occasions when a person appears and they are not given one? Answer, Sometimes they don't want one. Question, That isn't the

general practice? Answer, No. Question, Let's go along. Answer, They generally receive a receipt as soon as they pay the fine. Question, If he didn't receive a receipt for his money, whether it be five dollars or something else, he must not have been present and must have mailed it in. Answer, It is possible he may not have been present, he could've given it to the officer who was having the alteration made, and he then turned it into the violations clerk. Question, And in that case, who would've made the change, the intermediary, the officer who accepted the money? Answer, He was the one who would ask for the change, yes, but as far as scratching out, it could be made by him, myself, or the violations clerk. Question, In this particular case? Answer, In any case at all. Question, You are not accusing yourself, you don't remember? Answer, I don't remember this one, the one requesting the favor being done would naturally come to me about it first, he would have the five dollars, whatever it would be, for parking and ask if it was all right and I said yes, and the five dollars would be turned in with the defendant's copy and the one requesting the favor would scratch it out or I would have done it, or just let the five dollars be attached to it and Murray, as violations clerk, would scratch it out. In that case, the defendant wouldn't receive a copy of his receipt. Question, Then the officer who interceded, and who took the money, would be the one who had access to the white copy and blue copy, and that was right at headquarters? Answer, We all had access to all the copies. Question, Then one of the officers could've gone right to the cubbyhole, taken the offender's copy, put it behind yours, and made the change? Answer, Yes. [fol. 217] Question, Incidentally, there is no evidence how this matter was disposed of, and the receipt was for two dollars by Officer Holroyd, on a charge of illegal parking. Now, this group I am going to go through consists of cases where you did not make the complaints in all cases, your name appears on a couple but where you did accept

the fines. Question, Number 4453, R. Wright, charge of speeding 41 miles an hour in a 25 mile zone, and the section of the statute is given they have been lined through and the next in the "prohibited area" portion of the ticket which was made originally by Holroyd, there is no disposition shown on the back of the complaint, the offender's copy of the summons is present, and signed by him, and there is a receipt signed by Murray acknowledging five dollars for a parking charge, and I am asking you whether or not you are familiar at all with that particular case. Answer, I don't recognize it. Question, Now with reference to this Wright matter, you may not know the answer to this question I will ask you, a Robert Wright, who was the offender in this case and who has been identified by us as being such, has given us a check made by him to the Borough of Barrington for fifteen dollars, and it is endorsed "Borough of Barrington" and it was deposited just a couple days after its receipt in the violations bureau, I assume, of which you were not the clerk, and ask you whether or not that "Borough of Barrington" is in your handwriting? Answer, Yes it is. Question, That is your handwriting? Answer, Yes. Question, And that is part of the deposit that was made? Answer, Yes. Question, In this particular case, this receipt that Murray made wasn't made until January 8th, 1960, which is a couple of months following even longer. Can you explain why that receipt was withheld that length of time and why you received a check of fifteen dollars and you didn't account for it by a receipt? Answer, As far as time, at that [fol. 218] time I had an awful lot of back log of summonses which were not done, and which I didn't finish up until the end of the year. That would account for the time. Question, From your time, it seems to be an undisputed fact you have acknowledged endorsing it, and the bank stamp shows it was deposited a couple of days after the receipt by you. Why wasn't there a receipt for fifteen dollars? Answer, I can't explain that, sir, I know Murray

and I were both working together at that time. Question, This is in January, and this is October. Answer, The receipt was made out in January. Question, That is Murray's receipt. When you put it in the bank, how do you justify not entering somewhere you got fifteen dollars from Wright on this particular occasion? Answer, I have no explanation at all. Question, Pardon me? Answer, No explanation at all. Question, You don't remember the case? Answer, No, I can't place it at all. Question, Nothing unusual about that would occur to you? Answer, No sir, I can't recall it at all. Question, Well, shall we discuss possibilities right here? Answer, I don't know what possibility it could be, unless there was a mistake somewhere in my method of bookkeeping. Question, In your capacity of violations clerk, you came into possession of cash from time to time? Answer, Yes sir. Question, And when you entered, we'll say a five dollar entry on this white slip and this is not particularly personal, I am trying to get to the bottom of this, when you signed this receipt for five dollars and you had ten dollars laying alongside of it which had been received in cash, and assuming that was the only business for the day, and you were to make a deposit of two different five dollar fines and this was another five dollar fine, you could have used a fifteen dollar check to cover the two five dollar fines and this receipt, that is not technically a fact, but that could happen? Answer, It could happen, but it didn't. My money totaled up right. Question, [fol. 219] Naturally, it would if you were to only charge yourself with five dollars in this particular case, when as a matter of fact you received fifteen dollars, it would total up all right if the two different dollar cash items let's say the two five dollar items were diverted. Answer, Yes sir, that could happen. I didn't work on these tickets every day. I might go a week or two weeks before I did any book work on violations. I didn't have a chance to do it every day, but I took my tickets in step. All my checks

and the cash money separating them in twentys and tens all down the line, and entered them into my docket book and my cash book. Question, That was your routine? Answer, Yes, it is possible he paid a five dollar fine, in other words, a ticket that was changed to a parking must've been credited for the full fine. The wrong ticket was changed or something, figure that, I know a couple myself, I know that I was working on the books and a couple of tickets I was supposed to change, I don't remember at this time which ones they were, but I thought I had the right ticket when I changed it. That could be it, I don't know, I am not a bookkeeper and never was. I took this job as violations clerk for extra money and I am not a good bookkeeper, and apparently, that would be the only answer I could come up with, a mistake in my bookkeeping itself. Question, Fifteen dollars was the usual fine you imposed for speeding, regardless of what the schedule showed? Answer, Yes, ten and five. Question, When these people sent in fifteen dollars, this was sent in for a speeding violation? Answer, Yes. Question, And whether anybody interceded or not, fifteen dollars was it, if someone interceded on a speeding charge to have it reduced to parking, in all of the other cases we have seen you simply acknowledge the receipt of five dollars, always five dollars, and the same here, and the same here, even though you got fifteen dollars. Of course you are not answering those questions. When these intermediarys [fol. 220] came to you, oh, you said no intermediary ever came to you. Answer, An outsider? Question, Yes. Answer, Not that I recall. It is possible, but I don't recall any offhand that came to me personally. A lot of times as I had stated before, I think if someone had gone to Officer Page and given him five dollars, he would slip the five dollar bill on the ticket and not change it, and I would know by the five dollars it is supposed to be changed to parking, and when I worked on the books, I changed it. The only thing I could figure this where a five dollar bill

was on a ticket, supposed to be changed to parking, when I took the five dollars off that ticket, plus all the other tickets, plus the checks for all the other tickets, instead of changing the one, the five dollar bill was on, this check was sent in for the one that should not have been changed in the first place, for the one that should have paid the full fine. That is the only explanation."

The Witness: That is the end of Mr. Elwell's statement.

Mr. Aiken: Will you now go on to Mr. Murray's, please.

The Witness: This statement was taken on Wednesday, December 19, 1962, in the Prosecutor's office in the Court House, Camden, New Jersey, those present were Sidney Kaplan, Esq., Assistant Prosecutor, Captain Philip J. Large, and Detective John Corbin and Mr. Fred Albert, the Court Stenographer. "Donald Murray, sworn: By Mr. Kaplan: Question, Your full name? Answer, Donald Francis Murray. Question, You are a police officer in Barrington? Answer, Yes. Question, Any special title? Answer, Patrolman. Question, On a previous occasion, you did give some testimony before Bud Rigg, a Deputy Attorney General? Answer, Yes sir. Question, That was in the same investigation? Answer, Yes sir. Question, And at that time he advised you of your rights and I will repeat them for the record. I want to advise [fol. 221] you anything you say to me must be of course, of your own free will, and of course, without any threats, coercion or promise of reward. I'll advise you further that you do have, as every citizen has under the laws of New Jersey, the privilege to refuse to disclose any matter which may tend to incriminate you, and further with full knowledge of this, if you make any disclosure pertaining to this investigation, you thereby waive this right of privilege with respect to this investigation which might involve you. Are you willing to waive any immunity and proceed to the questioning? Answer, Yes sir. Question, I want to ask you some questions about certain traffic summonses and complaints, and all that sort of thing that

you were part of, either as the complaining witness or borough clerk. Have you ever been violations clerk in Barrington at any point in your service? Answer, Not that I know of. The judge put up a notice we could accept bail in a case, where it was three o'clock in the morning, something of that nature, but we have never taken any fines. Question, You have never acted as a violations clerk? Answer, No, since I have been on the force? Question, Yes. Answer, From 1960 to 1961. Question, You were violations clerk during 1960 to 1961? Answer, Yes. Question, Now, did you handle matters for the violations bureau or were there other officers who did the work? Answer, I was designated violations clerk and the other officers were Deputy Violations Clerk and they handled summonses and monies and receipts just as well as I did. Question, They disposed of matters in the violations bureau? Answer, Yes. Question, Were these monies generally entered by you or did they keep their own individual accounts? Answer, No, they were generally entered by me. Question, You kept the books? Answer, Yes. Question, And made the entries of fines received and for [fol. 222] what reasons? Answer, Yes. Question, And you also acted as patrolman? Answer, Yes. Question, You patroled the road and made complaints and issued summonses in traffic violation cases? Answer, Yes. Question, I think the best way to go about this would be to take some of the complaints or all of them where you were involved, and question you concerning them. In previous testimony given by you and other officers in Barrington, it developed it wasn't unknown that tickets were changed, tickets were altered, from one charge to another, that becomes very obvious from reading the testimony. Answer, Yes sir. Question, And that as far as you know, whether common or not was tolerated or done in Barrington, particularly in the years 1959, 1960 and part of 1961? Answer, Yes. Question, Which is the area of time we are covering, was it an approved practice to have another

officer change one of your tickets? Answer, It was a practice. Question, You say it was? Answer, Yes it was. The officer, the other officer who wrote the ticket, he would be explained the circumstances, whatever it may be, and authorize the change. Question, If you didn't alter the ticket, it would be a reasonable assumption from what you just said you allowed it and consented to it? Answer, Yes. Question, In what case did you authorize somebody to change your tickets or under what circumstances did you change tickets yourself? Answer, If a friend of mine came to me and wanted me to reduce a summons, I would do so, or if the officer came to me and it was a friend of his, I would do so. Question, A friendship case? Answer, Yes, and if it was a hardship case. Question, What is a hardship case? Answer, Somebody down and out. Question, Money-wise? Answer, Money-wise, yes, or if they can't afford to lose their license. Question, Economic reasons? Answer, if they have to drive for a living. Question, You [fol. 223] would consider a change? Answer, Yes. Question, What about a drunken driving case? Answer, No sir, I wouldn't fool with any drunken driving at all. Question, You know of no cases of drunken driving tempered with in Barrington? Answer, I know of none. Question, Were any rewards accepted by your fellow officers or by yourself? Answer, No sir, I never asked anyone for anything and never expected anything. Question, This particular ticket you feel you didn't make the change, but you consented to it, if it was made? Answer, Yes. Question, You have no recollection of the individual case? Answer, No sir. Question, Now, we have run through quite a few of these, Mr. Murray, where Elwell gets the five dollars and retains the white copy. Answer, Yes sir. Question, Any explanation for that? Answer, It wasn't a common practice to send these out unless the person came in and actually was there and paid it himself. If he paid it himself, he got the copy, but it wasn't a common practice to send out the receipt. Question, If somebody sent in cash

or a check? Answer, They would have to come in and get a receipt. Question, You simply made the entry? Answer, Yes. Question, When would that receipt be made out, if it was a check, when the check cleared. How did you handle that? Answer, I don't understand. Question, Let's say this, Mr. Price here, Richard Price, sent in five dollars by check, would you make out one of those receipts at that point? Answer, Yes sir. Question, When you got the check? Answer, Quite often I got five, six or ten checks in the mail at a time and I would attach them to the summons and put them in the drawer, and when I was going through my book work, I made out the receipts for all of them. Question, At one time? Answer, Yes sir. Question, You would allow enough time for the checks to clear or didn't that enter into your calculations? Answer, No sir. Question, And did you receive much cash through the [fol. 224] mail? Answer, No sir, not the cash, just checks, money orders and whatnot. Question, Bank checks and money orders? Answer, It slips my mind. Question, You never received cash? Answer, Not through the mail, not that I ever recall receiving any through the mail. Question, Now, Mr. Murray, at the beginning of this little inquiry, you said you had altered tickets from time to time? Answer, Yes sir. Question, So far we have run into very few. Would you ever change tickets that were made by other officers? Answer, Yes sir. Question, Now, I have before me a complaint, number 4453, September 15th, 1959, and the offense is R. Wright, a resident of Haddonfield, and he was charged with speeding at the rate of 45 miles an hour in a 25 mile zone, lines have been run through the posed and charged speeds, and in the parking block under prohibited area, there is a cross indicating it was parking in a prohibited area, and your receipt signed by you, both the white copy and the pink copy are here, and there is a receipt for five dollars on a charge of parking, and I have before me a check made by Mr. Wright payable to the order of the Borough of Barrington, 10-14-59, which

is a month later than the date on which the complaint was made, and that is in the amount of fifteen dollars and it's endorsed Borough of Barrington and deposited to the credit of the Borough of Barrington for fifteen dollars, and as I said, the fine was five dollars. Can you explain that? I call your further attention to the fact you dated your receipt January 6, 1960. Answer, I can explain this, sir. Question, You say you can? Answer, I don't know how it happened, but it could very well be this time of the year we were changing over violations clerks. Question, You have no explanation, you can't even speculate how it happened? Answer, All I can say, that is not my signature on the back. That is the only thing I can say about it. Question, You do acknowledge receiving five [fol. 225] dollars? Answer, Yes, I acknowledge that. Question, Now, let's talk about the money end of it then. As violations clerk, you were responsible for these monies, aren't you? Answer, Yes. Question, And marking the entries of receipts? Answer, Yes. Question, And where there are any expenditures, you're authorized to make expenditures? Answer, No. Question, In a drunken driving case, who pays the doctor? Answer, The court does. Question, How? Answer, By check. Question, Judge Eynon would make out a check? Answer, I would make out a check, then the judge would sign it. Question, The account is carried in the municipal court of Barrington and he is the only one authorized to deposit and draw from it? Answer, I would deposit it, and he was the only one who could draw on that account. Question, On these payments made in satisfaction of penalties and monies paid for fines, sometimes you received a check and sometimes you received cash, I assume? Answer, Yes sir. Question, And in cases where the white tickets are still attached to the pink slips, to show the receipt of money, that would indicate somebody mailed the money in and never called for the white slip or his receipt? Answer, Correct as far as I can gather from it, and is what usually

happens. Question, Then you would make the deposit of both cash and check? Answer, Yes. Question, And were you the only one who made up the deposit slips during the time you were violations clerk? Answer, I can't give you a yes or no answer on that. At the beginning, when I took over, I had help. Question, You had help? Answer, Yes, because I wasn't familiar with the book work involved. Question, Was it customary for people who paid fines by check to come in and demand a receipt or would that be an unusual situation? Answer, That would be an unusual situation. Question, They sent their checks in and that [fol. 226] is it? Answer, Yes sir. Question, So I suppose if somebody sent in a fifteen dollar check, like this, and you deposited it and there was a difference of ten dollars, that doesn't appear to be accounted for, that is the situation, you can't deny that. Answer, No. Question, It could be this is not an accusation, somebody could have taken some cash money that was paid for fines and penalties, and extracted that and diverted it from the Borough accounts or did I use words that don't mean too much to you? Answer, I understand. Question, That is possible? Answer, That is possible, but not probable. Question, Not probable because you know the men that work with you, and you know the practice? Answer, Yes. Question, But if there happened to be somebody that wasn't as high principled as the rest of you, it could've happened? Answer, It is possible, but not probable. Question, Is there anyone who checks from time to time to make sure a situation like that couldn't exist? Answer, The Borough auditers. Question, They wouldn't be able to apprehend anybody that might have done that. It is something that is not on the records. Auditers only audit the records, they don't send out any letter to people "Did you send in a check for ten dollars or fifteen dollars." Answer, Not that I know of. Question, They do in some instances? Answer, They may. Question, Then, to the extent the trail could be tapped if you had people who were unscrupulous,

it sometimes permits it, it seems to me this is an illustration of it. I am not asking you to commit yourself, I will withdraw the question. The answer is obviously yes, if you had control of the money and of the checks. Now, Mr. Murray, you weren't compelled to come here? Answer, No. Question, Your counsel advised you you should or could come if you wished? Answer, yes. Question, We haven't coerced you or mistreated you? Answer, No."

[fol. 227] The Witness: That is the end of the statement of Mr. Murray.

Mr. Aiken: Will you go on to the last one, by Mr. Holroyd?

The Witness: This is the statement of James H. Holroyd, taken on Wednesday, December 26, 1962, in the Prosecutor's office, here in the courthouse, Camden, New Jersey, and those present were Sidney Kaplan, Esq., Assistant Prosecutor, Captain Philip J. Large, Detective John Corbin and Fred W. Albert, the Court Reporter.

"James H. Holroyd, sworn, By Mr. Kaplan: Question, Your name is? Answer, James Holroyd. Question, And you are a member of the Barrington Police Force? Answer, Yes. Question, What capacity? Answer, Lieutenant. Question, I assume you are familiar with the purpose of our being here this morning. It is in connection with an order of the Supreme Court directing an investigation into the handling of traffic tickets in Barrington. Answer, Yes, I am. Question, And you have testified before in this matter? Answer, Before Mr. Rigg. Question, The Deputy Attorney General? Answer, Yes. Question, I am going to ask you some questions, but before I do, I want to advise you anything you say must be of course of your own free will, and without any threats, coercion, promises or reward, and I advise you further that you have as has every citizen under the law of New Jersey, the privilege of refusing to disclose any matter which might incriminate you, and further with the full knowledge of this right, if you make any disclosures pertaining to this investigation,

you waive that right of privilege with reference to any phase of the investigation which might involve you. With that understanding, are you ready to proceed? Answer, Yes. Question, For the sake of expediency, and so that this doesn't take up too much time, we have adopted a procedure where we simply ask you questions, and you will [fol. 228] answer them, and generally they pertain to particular tickets, and when I use the term ticket, I mean the complaint and summons and whatever else becomes a part of the assembly. The first ticket that I will ask you about appears to have been altered and they are tickets which you have signed as the complaining witness or the complainant and where the offenses which you originally charged the offender with, has been altered and changed to another type of offense. You will have an opportunity to examine the ticket, and unless you make an objection, it can be assumed you did make the ticket out, if your name appears on it. Answer, Yes. Question, That would also apply to any receipts for penalties and fines received by you? Answer, Yes. Question, It was the practice if anyone were to change a complaint or anything of that sort, he would come to the officer who made the complaint and ask him whether or not it was satisfactory for it to be changed? Answer, Yes. Question, That was the prevailing custom. There may have been exceptions, but on most occasions? Answer, In my cases, and the rest of the men, if any alterations were to be made, they would contact the officer and you would say yes or no. Question, In a case of this sort, even though you didn't make it, and you don't remember who did make it, with the practice you followed would these yellow slips have been such that you would have known at one time how it was disposed of? Answer, No sir, I would not. It would be just a disposition what they had on it, and that would be it. The amount of fine paid would be on the back. I will show you something on the back here. Question, You are pointing to the officer's comments? Answer, Action on the case,

whether it was disposed of through the violations bureau, or court action, and this is on the officer's copy, the yellow copy, and on the case, if it was disposed of through the violations bureau, it would be this, and by the court [fol. 229] action this, and date of disposition, amount of fine, and costs paid. Question, If it was disposed of in the violations bureau, would the nature of the offense, changing it, be on your yellow copy? Answer, Just the amount of the fine and cost. If the ticket was changed to parking, it would be a five dollar fine. Question, You acted as a Deputy Violations Clerk for a time and actually took in some of these fines? Answer, Yes. Question, Did most of these people come in personally and pay the fines or were they received by mail, what is your general experience if there is one you can describe? Answer, You mean on— Question, Getting the money in. Answer, They would come in and it would come in through the mail all sorts of ways. I wasn't the violations clerk, just deputy, and the only reason that we were made deputys was the fact rather than call the violations clerk out at night, or inconvenience the people in coming back, we made all the men in the department Deputy Violations Clerk. Question, There is no complaint, I am trying to find out how you operated. After you gave a ticket, the white copy went where? Answer, The white copy and blue copy went into the violations drawer. Question, This is blue? Answer, Yes, as I explained earlier, this is possibly on radar. Question, I don't mean in this particular case, but suppose court action was called for, what happened to the white and blue? Answer, If a court action was called, the white and blue would go before the judge and the court would write up the disposition on the back of it. Question, And the clerk would have custody of the white and the blue until the court time and not the violations clerk? Answer, the violations clerk and court clerk are one and the same. It was put into a drawer and that is where it stayed until court night. Question, The fact in this particular case,

the offender's copy of the summons had not been returned would indicate she mailed it in? Answer, Or brought it [fol. 230] in. Question, Was it required it be returned? Answer, It was required but a lot of times a person paid a fine and would say he lost it or misplaced it and we would write it down and issue a receipt and tell them to mail it in. Question, Sometimes they came through the mail without the waiver? Answer, Yes, sometimes they just mailed it in. Question, What happened to the white part after the receipt? Answer, That would be filed, after the court's disposition. Question, After the violation was disposed of? Answer, That would be filed in a case docket. Question, You have a pink copy and have a white copy. When you accept a fine, what did you do with the white copy? Answer, The person paid the fine and the white or pink, it didn't matter, you gave them either one. Question, Let us say he paid by mail, what happened to the white copy? Answer, That I couldn't tell you, I couldn't handle anything that came in through the mail. That would be handled through the violations clerk, I don't know what he did. Question, Do you know who the violations clerk was in 1959? Answer, I think it was Officer Elwell. Question, In these particular cases, in some cases where you said you didn't make the changes, but where changes have been made, you do say however, it must have been done with your consent? Answer, It was done with my consent, yes. Question, And further for the record, these yellow copies that were left in your cubbyhole on which the disposition of the case was shown by fine or otherwise, did or did not specify what the charge was? Answer, Yes, it did specify on the front of the summons, it would specify on the front. Question, Look at the blue copy under "Action" on the case. Answer, It would specify what date the fine was paid and if it was altered to parking, it would just have five dollars there. Question, Was the word parking written in there? Answer, No, five dollars. Question, You could tell from the amount of the

[fol. 231] fine what the charge had been changed to? Answer, Yes. Question, And that was the only copy you had with the yellow and that you left in your cubbyhole? Answer, Yes. Question, And the front was known as the police record or duplicate of the summons and complaint, was filed in? Answer, What do you mean? Question, Your yellow copy had all of the times down on the front, such as the blue copy, and if you turned it over and if the fine was five dollars on a speeding charge, you had charged it would show there had been an alteration. Answer, Yes, it would show it was altered. Question, As a matter of fact, these blue copies do show the alterations as well as the first copy, the original. Answer, Yes. Question, Was your yellow copy altered too? Answer, Yes, I assume they were. I didn't take that much notice to them, I would look at the back and see the disposition. If the front copies were altered, the yellow copies were altered. Question, You turned the whole thing in and somebody extracted the yellow copy and put it in your little cubbyhole? Answer, Yes. Question, And you lost track of it for a time? Answer, This would be only a procedure on radar. If I wrote the summons on the street, or in an accident, sometimes I would take my yellow copy off and put it in the cubbyhole, or in a hurry, staple them and put them in the violations cabinet. Question, If a change were made on the original and blue copy, then the alteration might show on your yellow copy if you didn't make the change? Answer, I didn't get your question, give it to me again. Question, You turned in the white copy and blue copy? Answer, Yes. Question, The yellow copy you put in your cubbyhole, you detached the yellow copy. Assume there is a change made in the white and blue. Answer, Then I would make the change on the yellow, I would find out the disposition of the case. Question, You did follow through with each case? Answer, Yes. Question, Even though [fol. 232] your yellow copy would've shown the change? Answer, If I was approached on the ticket, I would say

go ahead and when I looked on the back, it was a five dollar fine, I put five dollars on the ticket and would keep that a while and throw it away. I would keep it a couple of months and throw it away. Question, Here is number 4453, September 15th, 1959, R. Wright, of Haddonfield, you made the complaint, a charge of speeding which was downgraded or changed to parking in prohibited area, and a receipt issued by Officer Murray was for five dollars in satisfaction of a fine or penalty for parking, and the offense has a cancelled check which he has given us, which shows fifteen dollars has been sent in, and not five dollars and the only reason I ask you about this, you have made the complaint and you have said in each case you knew of the downgrading, and knew of the fines paid. Do you have any knowledge of what happened in this case. It becomes as simple as that. We have a cancelled check for fifteen dollars, for a five dollar fine. Is there anything you know about that? Answer, No, if the summons was changed, the officer came to me and I gave the O.K. Question, Right now, we are just interested in the check. Answer, I know it's not my handwriting on the check. Question, Who has charge of these monies as they are received and deposited? Answer, Who has charge, the violations clerk. Question, In other words, the Deputies have nothing to do with that? Answer, Not with the monies. Question, In 1960, who was the violations clerk? Answer, January, 1960, Officer Murray. Question, And Murray accepted this? Answer, Yes. Question, and he was responsible for making the deposit slips? Answer, In 1960, he was. Question, This deposit was made in October, 1959, the check is, and the receipt isn't dated until January 8, 1960, and this was presented for payment on October, 1959, to the bank, so it would've cleared in 1959 and the entry [fol. 233] itself on the receipt wasn't mailed until January 8, 1960. Answer, I don't know anything about that, that was under the violations bureau. All I know is I wrote the summons and the check. I don't know anything about it. The only money we handle is when people would come

into the hall to pay up, and I would issue a receipt and attach the money to the receipt and ticket and put it back in the drawer. Question, Who was the violations clerk of 1959? Answer, officer Elwell, and Officer Murray came in as violations clerk in 1960. Question, Even though the violations clerk himself must've carried the actual deposit to the bank, or didn't the violations clerk always carry the actual deposit to the bank? Answer, No sir. Question, That could be done by any police officer? Answer, Yes sir. Question, Regardless of that fact, the actual making up of the deposit slip and the items on it, that was done by the violations clerk? Answer, Yes. Question, That was his job exclusively? Answer, Yes. Question, And was it the job of the violations clerk to tally or balance the books, so to speak, to make sure there was enough money deposited? Answer, I never bothered to ask the violations clerk how he handled the books. Question, Not how he did it, but was it his responsibility? Answer, Yes, his responsibility was to handle the books and the money. Question, If the books were out of balance, he is the one you would look to find out what had happened? Answer, Yes sir, Mr. Kaplan."

The Witness: That concludes Mr. Holroyd's statement.

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[fol. 236] The Court: Ladies and gentlemen of the jury, the Court has waited until all of these statements have been read to you, of course, and at this time, I want to, as I promised Counsel I would, draw something to your attention.

We have had as far as each of the defendants are concerned, two statements, one taken in Barrington Police Department by Deputy Attorney General Bud Rigg, and the other taken in the Prosecutor's office by Sidney Kaplan. There is law, of course, as far as the admissability of these statements are concerned. The law applies to this case as follows: This is a conspiracy indictment, and at

the time that these statements were taken, the conspiracy itself, or the alleged conspiracy had been completed. Now, the law of New Jersey is this, if a statement is taken from a co-conspirator before the alleged conspiracy is completed, that statement is admissable against the co-conspirators. In this case, however, all of these statements were taken after the alleged conspiracy was completed. In a situation such as this, therefore, the statements are only admissable against the person who made them, and you are to consider them as far as your consideration of what was read to you by Mr. Garifo, and which the court of course, from an examination of all the statements permitted him to read to you, merely from the standpoint of it being binding only upon the person who made the statements. For example, in Mr. Elwell's statement, he may have in some of the questions mentioned the name of Mr. Murray or Mr. Holroyd. Anything that he says in the statements concerning Mr. Murray or Mr. Holroyd is not binding upon them, but merely binding upon Mr. Elwell. The same is true as far as the other statements are concerned. The statements are only binding upon themselves, even though they mentioned someone else's name. It is not binding [fol. 237] upon the persons mentioned, but only binding upon the person making the statement.

I believe, gentlemen, that covers it as far as the statements are concerned. Now, is there anything else, and may Mr. Garifo be excused?

Mr. Aiken: Yes, Your Honor.

(Witness excused.)

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IN THE SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

Docket No. A-327-63

Criminal Action On Appeal from Camden County Court.

Sat below:

Anthony C. Mitchell, J. C. C. and a Jury.

STATE OF NEW JERSEY, Respondent,

vs.

JAMES HOLROYD, EUGENE D. ELWELL and DONALD MURRAY,
Defendants-Appellants.

Appellants' Appendix

[fol. 253] EUGENE D. ELWELL, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Sherman:

Q. Mr. Elwell, I am going to ask you some questions, will you speak up so that the entire jury can hear you?
A. Yes sir.
Q. What is your full name?
A. Eugene D. Elwell.
Q. And where do you reside?
A. 207 Gloucester Pike, Barrington, New Jersey.
Q. Are you married?
A. I am, sir.
Q. Do you have a family?
A. I do, five children.

Q. Now, were you a police officer in the Borough of Barrington in 1959?

A. I was, sir.

Q. How long have you been a police officer in the Borough of Barrington?

A. Eleven years last February.

Q. And you are still a member of the police force, is that correct?

A. I am, sir.

Q. And what were your duties chiefly as a police officer in the Borough of Barrington?

A. Routine duties of police, patrol, take care of calls, complaints.

Q. And in those routine duties, from time to time did you also have occasion to stop motor vehicles for the violation of a traffic act?

A. I did, sir.

Q. But in addition to stopping motorists, you had your regular duties as a policeman, is that correct?

A. That is right.

Q. You were not a special policeman, is that correct?

A. No sir, regular police officer.

Q. So that therefore your duties would include any violation of the law, no matter how high or how low the offenses might be, is that correct?

A. Correct.

Q. Now, in the year of 1959, were you also acting as a violations clerk of the Borough of Barrington?

A. I was.

Q. Can you tell this jury if you recall when you were [fol. 254] first appointed or asked to act as a violations clerk?

A. I was appointed in the first of January, 1959.

Q. Do you remember or recall who was the magistrate at that time?

A. Peter J. Coruzzi.

Q. Were you appointed by the magistrate or were you appointed by the town of the Borough of Barrington?

A. Mayor and counsel approval.

Q. And will you tell the jury what was the procedure and custom at that time of the officers acting as violations clerk for the Borough of Barrington?

A. We had an alternating system where a different officer was appointed each year to be violations clerk and court clerk.

Q. And would you say that the year of 1959 was your year, you might say, to act as a violations clerk?

A. Yes it was, sir.

Q. Now, when you speak of acting as a violations clerk, can you tell us how often the courts were held in the Borough of Barrington?

A. We have court twice a month, the second and fourth weeks.

Q. The second and fourth weeks?

A. Yes.

Q. Were they evening courts or just in the day?

A. Every evening, seven p. m. at night.

Q. Now, on those evenings, that you had in court, did you also work during the day as an officer?

A. Yes, I did.

Q. Now, when you were appointed as a violations clerk, did you receive any extra compensation for performing that service?

A. I did sir, three hundred dollars?

Q. Three hundred dollars?

A. Yes.

Q. You are speaking of three hundred dollars for a year?

A. For the year, yes.

Q. Now, were you told by anyone what some of your duties would be as a violations clerk?

A. Just by the violations clerk who was in office before me, related some of the information to me.

[fol. 255] Q. Who was in office prior to the time that you became violations clerk?

A. Robert Rehmer.

Q. Is he an officer?

A. He is, sir.

Q. Incidentally, before we go any further, how many officers were there on the force in the Borough of Barrington in 1959?

A. I think we had eight.

Q. How many?

A. Eight all together.

Q. Now, you say Mr. Rehmer, Officer Rehmer, was a violations clerk right before you came?

A. That is right, in 1958.

Q. Before you became a violations clerk, did you at any time act as a deputy?

A. Yes, before and after '59, I was deputy.

Q. Would I be correct in saying that the custom and procedure was that each officer was designated as a Deputy Clerk at that time?

A. That is correct.

Q. No matter who the violations clerk or clerks was?

A. That is correct.

Q. Was the violations clerk and the clerk of the court the same?

A. Both the same, yes.

Q. The same person acted the same way, is that correct?

A. Yes sir.

Q. Now again I ask you, did you also work on the same day that you would serve that evening as a violations clerk?

A. Yes, I worked that day or at night, depending on what my regular shift would be.

Q. Were there times that you stopped a motorist for a motor vehicle violation, and then later sit in court in that case would come up as a violations clerk?

A. Yes, sir.

Q. And that was the custom or procedure in those days, isn't that correct?

A. That is correct.

Q. Now, can you again tell us what some of your specific duties as you learned them from your predecessor concerning your duties as a violations clerk?

A. Well, accept fines, make out receipts, take care of the books and records in the court.

[fol. 256] Q. Now, did it involve much work as far as book work is concerned?

A. It was a tremendous amount of work, yes.

Q. Were you able as a violations clerk to perform your duties just one night or two nights during the month when they held court?

A. No.

Q. Did it necessitate you taking some of these books out from time to time to your home or to other places around the court house to do your work?

A. Yes, I used to quite often take them home to work on them at night.

Q. What were some of the books or records that you kept, what were they called, what kind of books were they?

A. I handled court docket, criminal docket, and municipal court cash book, plus the other reports we had to make out to the state and county, the mayor and council, traffic control docket, control sheets, blue cards we had to make out to the state, plus our receipts and our regular summonses.

Q. Did you ever have a course of any kind in bookkeeping?

A. No, I never did sir.

Q. Was any particular type of course necessary at the time that they appointed you violations clerk?

A. Not at that time, sir.

Q. Did they ask you if you had any special requirements for that position?

A. No.

Q. Was it a position which you sought or which was given to you by necessity of being a police officer?

A. It was just given to me under the rotating system we had there.

Q. In other words, you didn't seek that position?

A. No.

Q. Now, to your knowledge, was the books of the Borough of Barrington audited in 1959?

A. They were sir, yes.

[fol. 257] Q. And do you know the results of the audit of the book of 1959 while you were acting as the violations clerk of the court?

A. I know they were all approved by the auditor.

Q. Now, are you acquainted and familiar with the two gentlemen sitting in here today, the two defendants?

A. I am, sir.

Q. And did you and the two defendants here work on the same shift at all times?

A. No sir, we alternated our shifts around.

Q. Were there some times that you would be on one shift and these gentlemen were on a different shift?

A. Yes.

Q. And could you tell us whether that would happen quite often?

A. We changed every week, I might see one one week, and I'd not see them again for another three or four weeks.

Q. Did you at any time have any type of understanding with these two gentlemen to alter any tickets or to change any tickets which were given by you or any other officer in the Borough of Barrington?

A. No, no definite understanding.

Q. Were you in a position to know every day what each one of these gentlemen were doing?

A. No I was not.

Q. And were they in any position to know what your duties were, what you were doing?

A. No sir.

Q. Now, I direct your attention specifically to the indictment and the overt act under this indictment of a matter which happened September 15th, 1959, you were a policeman at that time, is that correct?

A. I was, sir.

Q. And you were the violations clerk at that time?

A. I was.

Q. Now, can you enlighten us about a person by the name of Robert Wright, who was charged with exceeding the speed limit allowed in a zone, can you tell us anything

that you might know about this matter which is indexed [fol. 258] as complaint 4453, issued out of the municipal court of the Borough of Barrington?

A. Well, at that time in September or whatever the date that you referred to, I don't remember this case at all at that time.

Q. Now, did you stop that motorist or arrest that motorist for any offense?

A. Not to my knowledge, I didn't, no.

Q. Now, would you know whether or not you endorsed a check made payable by this gentlemen for fifteen dollars in the Borough of Barrington?

A. I did, yes.

Q. And I show you a check which was admitted into evidence, this check is marked in evidence as S-6 and ask you to whom is this check payable?

A. This check is payable to the Borough of Barrington.

Q. Who signed it?

A. Robert Wright.

Q. Now, will you look at the back or give us the date on the first?

A. October 14th, 1959.

Q. Now, will you look at the back of that check, is there an endorsement?

A. There is sir.

Q. And read it to the jury, how it is endorsed.

A. It is endorsed "Borough of Barrington."

Q. Is it your handwriting?

A. It appears to be mine, yes.

Q. And did you have authority at that time to endorse all checks in the manner in which you endorsed this check?

A. I did as violations clerk.

Q. And did you endorse all checks in the same way in which you endorsed this check?

A. I did.

Q. Did you deposit this check?

A. Yes, I did.

Q. And does it show it on there, that the check was deposited in the bank?

A. It shows the bank statement, yes sir.

Q. What is the amount of that check?

A. The check is for fifteen dollars, sir.

Q. Now, how often would you make deposits in the bank?

A. Well, depending on the volume of work and how often [fol. 259] I worked on the books, maybe once, twice or three times a month.

Q. Was there any rules to your knowledge or did anyone tell you as to when you should deposit the money or how often you should deposit the money?

A. No sir, no rule.

Q. When you did deposit the money, did you make out two slips, one for the bank and one for the Borough?

A. We kept a duplicate of the deposit slip.

Q. And all those duplicates still refer to the Borough of Barrington for which you made?

A. They are still in the custody of the court.

Q. They are duplicates of the accounts you have looked up and checked in the records for the purpose of doing the books?

A. Correct, sir.

Q. In the year 1959, was there anything different about that year as compared with the other years in respect to the number of traffic violations?

A. We had a very large volume of traffic cases in 1959, yes.

Q. Could you explain the reasons for it?

A. Well, in 1959, we had radar and we had put it in operation.

Q. Was that the first year that you had radar?

A. It was the end of '58 and the beginning of '59 when we first started to put it in.

Q. Did it continue throughout the year of '59, radar?

A. It did, sir.

Q. Did you have radar in operation in 1960?

A. In the very beginning of the year, but then our radar was out of order, it was broken, and we didn't use it most of the year.

Q. Mr. Elwell, I show you here a municipal court report, and ask you first if you recognize this report and where it came from?

A. Yes, this is a copy of the amount of the summons and fines accepted into the court. This was taken from our regular court report made to the mayor and council which was made every month.

[fol. 260] Q. Now, what does it show for the year 1959 in respect to the amount of cases heard and also to the amount of fines that were produced that year?

A. In 1959, the total cases for the year was 1,126. The total cases and costs received was $19,145.50.

Q. Now, does this include all the motor vehicle offenses which were handled by the violations clerk as well as by the court itself?

A. Yes.

Q. Now, would you look at 1960 and tell us how many cases were heard in 1960.

A. 1960, the total cases for the year was 575, total fines and costs for the year was $10,019.00.

Q. Did you have to process all of these cases which occurred in 1959?

A. I did sir, yes.

Q. So that the year of 1959, there was a total of 11 some hundred cases that were processed by you as violations clerk in addition to your regular duties as a police officer, is that correct?

A. That is correct, sir.

Q. Now, returning again to the indictment at the present time, with reference to this overt act, which is charged in the indictment, to your knowledge therefore, you did endorse this check, is that correct?

A. I did, sir.

Q. To your knowledge, you did deposit that check, is that correct?

A. Correct, sir.

Q. Now, was anything else that you know about this particular matter besides receiving the check in the usual course of your job and also endorsing it and depositing it?

A. Well, I can elaborate on it, I told you what I think it was. I had the check there with my other money, it was endorsed and deposited. As far as the written ticket is concerned, I don't remember seeing that ticket at all at that time, and I don't recall that ticket up until I was going out of the office as violations clerk in December.

Q. Well, the entry was made in the book, were you still [fol. 261] violations clerk?

A. No, I was not, sir.

Q. So that the entry that was made in the book which showed five dollars, was not made by you, isn't that correct?

A. That is correct.

Q. And you were not the violations clerk at that time?

A. No I was not.

Q. But you were the violations clerk when that check was issued, received to your office, by someone?

A. Yes, right.

Q. Now, you personally did not receive this check from the gentleman that made out the check?

A. No, I did not.

Q. Will you tell the jury what the custom and procedure was when you gave a ticket or any officer gave a motorist or a ticket which was similar to speeding or speeding?

A. Officer would write the summons out, give the defendant his hard copy, the complaint, and the rest of the ticket, the complaint, the blue copy, the court records and was all put into a cubbyhole in the office or in the violations cabinet, and just left laying there until appearance on the court date. If that ticket was paid before time, before court, which people have the right to do, the money or fine, what-

ever it be, or check would be put with the ticket by a paper clip. That would remain in a drawer until I would have an opportunity to work on the books.

Q. Now, were there certain violations such as speeding and other violations which the violations clerk had authority to handle without a disposition made by the court itself?

A. Yes.

Q. What were some of those violations besides speeding?

A. Well, most of your violations, careless driving and the rest of them with the exception of drunken driving or hit and run, but most of the others we could handle at the violations bureau.

Q. Now, I show you tickets which were marked in evidence, in reference to a Mr. Wright, and is marked in evi-
[fol. 262] dence as S-2, and ask you if these tickets would represent the usual type of tickets that would be given to a motorist if he was charged with speeding.

A. Yes, this is our uniform ticket.

Q. Or any other violation, is that correct?

A. Any violation at all, motor vehicle.

Q. Now, the duty of the officer stopping the motorist to mark on that ticket the violation which he believes the gentleman or lady has violated or done?

A. Yes, it is marked right here.

Q. Now, in back of those tickets, does it say anything in there with respect to pleading, to the pleading of guilty if the person wants to plead guilty to an offense?

A. Yes, at the bottom of the ticket there is appearance, plea and waiver section, where a person could just sign and pay their fine at the violations bureau or mail it in.

Q. So that if you or any other officer stopped a motorist for speeding, would it be explained to the motorist or would the motorist ask you whether or not he or she could send in the money in the form of paying a fine?

A. Yes, he would either ask us or we would explain it to him. Also inform them there is a telephone on the back here, the violations bureau, where they could call in.

Q. And if you would have stopped a motorist today, and charged him with speeding, would you mark on that ticket the date of it, of the next hearing of court?

A. I didn't hear your question.

Q. Would you mark the ticket the next date of court hearing?

A. Yes.

Q. Usually that would be two or three weeks hence from the time that you would give the ticket?

A. It could be at least two weeks, yes.

Q. Now, during those two weeks, the motorist could send in his money or check or whatnot to the Borough Hall, is that correct?

A. That is correct.

[fol. 263] Q. Or could bring it in personally, is that correct?

A. Correct.

Q. After the motorist brought it in during the day, there would be someone present to whom he or she would leave that money with?

A. There generally would be, yes.

Q. And did that person be a violations clerk?

A. I would say in most cases it would be one of the deputys.

Q. And were there others that worked in there besides a deputy or violations clerk during the day?

A. Well, we had people that worked in the tax office, that they could bring it in and give it to.

Q. I believe that gentleman that testified, Mr. Wright, if I am correct in my recollection, said that he brought his in on the day that he was supposed to appear in court that evening, and gave the check to someone in the office. Did the girls or anyone there have the authority to receive that money, to your knowledge?

A. To my knowledge, they did, yes.

Q. Was there monies received from time to time by other people besides yourself when you were the violations clerk?

A. Yes.

Q. And when you came into the hall to sit as a violations clerk on the night that the court was in process, is that where the checks or money would be turned over to you?

A. Well, it would all be left in a drawer until I worked on the books.

Q. And would you look at the money that was in the drawer prior to the time that you come there to sit as a violations clerk of that evening?

A. No, sir, only if I have to go there to get change out, to make change or for other fines or something, that is about the only time.

Q. In other words, would I be correct in saying that you appeared as a violations clerk once in two weeks, for the court hearing, and that would be the time when you would look in your drawers to see what monies or checks there are [fol. 264] that came in?

A. Not that night in particular, only when we worked on the books was when I pulled all the money, tickets and everything out and worked on them.

Q. Did you get the various notations attached to the checks or money order of any attached matters?

A. That is correct, sir.

Q. And you as a violations clerk, could follow what was attached to this card?

A. Correct, sir.

Q. And enter into your books in the manner which was set forth, correct?

A. Correct.

Q. Did you at any time during the time that you acted as the violations clerk or as a police officer, make any agreement with any other officers to violate any of the laws of the traffic laws of the state of New Jersey?

A. I did not sir.

Q. Did you ever have any type of understanding between you and any other officers to violate the laws of the state of New Jersey in reference to the traffic laws?

A. No, sir.

Q. Did you at any time to your knowledge, violate the laws of the state of New Jersey, concerning the traffic laws?

A. I did not, sir.

Q. You were asked back in 1961 to answer some questions, were you not?

A. I was, sir.

Q. And some of these questions and answers were read to the jury today, is that correct?

A. Correct, sir.

Q. And they were part of an entire statement of facts, questions which were asked of you, and answers that were given by you, both to Mr. Rigg and to Mr. Kaplan, is that correct?

A. Correct, sir.

Q. Did you at any time refuse to give answers to any of these questions which were propounded to you?

A. No sir, I did not.

Q. You were charged in this particular indictment, Mr. Elwell, together with the other two defendants that was [fol. 265] January 1, 1959, and up to and including June the 29th, 1961, that you did commit the crime of conspiracy, that they unlawfully conspired together to pervert and obstruct the due administration of the motor vehicle traffic laws of this state, in that they unlawfully, knowingly, and corruptly, agreed to dispose of certain traffic summonses commonly designated as operating offenses. Did you ever make such agreements with any officers?

A. No I did not, sir.

Q. Did you at any time unlawfully and knowingly and corruptly agree to dispose of traffic offenses?

A. No sir.

Q. Were there sometimes changes that you noticed on some tickets that came into your possession as a violations clerk?

A. Yes there was, yes.

Q. And did you explain all of these changes when you were asked these various questions, both by the prosecutor's office, as well as by the Deputy Attorney General?

A. I explained them to the best of my knowledge, yes sir.

Q. Did you ever receive any instructions from the court itself what your duties were as violations clerk?

A. No sir, I did not.

The Court: Gentlemen, it is four o'clock, time to quit for the day. Ladies and gentlemen of the jury, please return at quarter of ten tomorrow morning, room 326. Spectators remain seated until the jury leaves. You may leave.

(Whereupon court is adjourned for the day.)

[fol. 266]

June 4, 1963
Camden, New Jersey

Before: Hon. Anthony C. Mitchell, J.C.C.

Appearances: (As hereinbefore noted)

The Court: Now, I think Mr. Elwell was on the stand. He may resume the stand. You have already been sworn.

EUGENE D. ELWELL, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Sherman:

Q. Mr. Elwell, the year of 1959, how many officers were on the force in Barrington?

A. We had eight of them I believe.

Q. And during that year do I understand that you yourself were also acting as a police officer?

A. Yes sir.

Q. And you had various shifts during that year?

A. We work about six or seven different shifts, our department.

Q. Now, during that year, did you have occasion to take your books home while you were the violations clerk?

A. Yes I did, quite often.

Q. Did you have occasion to have someone in your house to help you to do your book work in reference to your duties as a violations clerk?

A. I did, my wife helped me, yes.

Q. And was that help rendered to you quite often during [fol. 267] the year 1959?

A. Yes.

Q. Now, Mr. Elwell, you were questioned in reference to some tickets first by Deputy Attorney General Mr. Rigg, do you recall that?

A. Yes.

Q. And would you say that you were questioned in reference to approximately a hundred tickets or so?

A. It was at least that amount or more.

Q. And those tickets in reference to tickets issued by various members of the police department during the year of 1959?

A. Yes.

Q. And would they have been tickets issued by any or all of the eight members of the police force during that year?

A. That is correct, yes sir.

Q. And did you in all these cases that you were questioned, give your explanation of anything that you might know in reference to that particular ticket which you were asked about?

A. To the best of my knowledge, yes.

Q. How, were there tickets that you acted upon as a police officer where you gave a motorist a ticket charging him with some violation, and then later changing that of your own accord?

A. Yes I did.

Q. Can you tell this jury what were some of the instances that motivated you to change that particular ticket or tickets?

A. Well, I had one case where I issued a summons like the man was running a bulldozer or something on the White Horse Pike, and I issued him a summons for running a vehicle without rubber wheels, and then afterwards I realized that the part he was running on was a closed section of the pike they were working on the highway at the time, and I dismissed the ticket myself, because I didn't feel it should have been issued in the first place, and I had another case—

Q. Before you go on to the other case, did you dismiss that ticket?

A. I dismissed it, yes.

[fol. 268] Q. And did you dismiss it because you felt that you were wrong in the beginning in the violation with which you charged him?

A. That is correct, sir.

Q. Can you say or would you say whether or not the judge knew later on of the fact that you dismissed that ticket of your own accord?

A. To my knowledge he did, yes sir.

Q. Did you ever receive any instructions from the judge of your court or the judge of the Supreme Court or the administrative director that you could not dismiss an action wherein a violation clerk could handle?

A. No, I was not.

Q. And therefore when you dismissed a matter, you dismissed it because of the fact that a mistake was made by you personally in respect to that ticket?

A. That is correct.

Q. Now, what other instances, do you know of an occasion, and incidentally before you answer that, this one that you are talking about which you just mentioned is one of the matters which is in this questionaire which you were asked about the ticket?

A. Yes, I was questioned about that ticket.

Q. Now, what are some of the other instances that you had?

A. Well, I had another dismissal I made in '59 where one night while I was driving the police car, a person made a left hand turn in front of me to go down the side street, almost causing an accident. I went after her, gave her a ticket for careless driving, and then afterwards I was thinking it over and in fact I had another officer in the car with me, and I was of the opinion myself that I was going too fast myself, and the almost near accident was more my fault than it was this other party's, so I dismissed that ticket.

Q. And were you questioned about that ticket?

A. I was sir, yes.

Q. And is that in this book where Deputy Attorney Gen-
[fol. 269] eral Mr. Rigg asked you questions in reference to certain tickets?

A. It is, yes.

Q. And is that listed as one of the tickets?

A. Yes it is.

Q. Now, will you mention some of the other instances that you had occasion to change tickets?

A. Well, I had occasion on a few on radar, sir.

Q. Would you explain to the jury how this radar works and how the tickets are given out and what happens to it?

A. Well, when we operate a radar, it was generally with two or three officers working on it. One operated the radar machine which has the clock and that clocks the speed while it is the other officer or two officers were to wave down the car and write out summonses. There was different occasions where I would stop a car, yell back to the other officer, ask him what the speed was, he would tell me, I'd write out the ticket, and on occasion where we had more than one car stopped at a time, the wrong speed would be written down on the summons and he would yell back a correction in it, I'd scratch it out and change it to the right speed.

Q. Then in any of these matters which you were questioned on by Deputy Attorney General or the Prosecutor's

office, did any of these tickets have any violation concerning drunken driving?

A. None sir, none at all.

Q. Did they have any violations but those which you, as a violations clerk, could take care of and were permitted to take care of by law?

A. I was permitted to take care of all of them, yes sir.

Q. And would most of them you say refer to speeding?

A. Speeding, maybe a red light or a careless driving, all minor offenses of the motor vehicle code.

Q. And were there many of these tickets that you were questioned about that you had no knowledge or information at all concerning them?

A. Yes, quite a few on there, yes.

[fol. 270] Q. Now, did you at any time receive any monies from anyone for changing any tickets?

A. Definitely not, no sir.

Q. Did you ever receive even one dollar bill during your whole course as a police officer for any change or changes you may have made on a ticket?

A. No sir, definitely not.

Q. Were you ever instructed by anyone that you had no authority to change a ticket?

A. No I was not.

Q. Did you believe it was within your discretion as a violations officer to change a ticket if necessary under the circumstances either by mistake or that you were wrong or that the officer was wrong from the beginning?

A. Yes, I was under that assumption since it was well-known we didn't try to hide them, when we made a change, it was very obvious changes that were made. Anybody at all looking at the ticket could see it was changed.

Q. Was there ever any understanding or agreement between you and these two young men here, that you were going to change tickets or which ticket you were going to change, or reasons for it or that you conspired to do anything like that?

A. No sir, definitely not.

Q. Did you ever have any meeting of the minds to do anything unlawful or wrong in respect to these tickets?

A. No sir.

Q. Did you, in your opinion, ever believe that you were doing something contrary to the law when you yourself changed a ticket by reason of some mistake?

A. No, I was doing just a normal thing, I was condoned by the court and everything else at the time.

Q. And were those tickets available in the Borough Hall for anyone to see, for the other officers to see, for the public to see, and everyone else?

A. They were right in the office, yes sir.

Q. Were any of those tickets ever taken home or hidden [fol. 271] or put away someplace?

A. No sir.

Q. Were there, to your knowledge, times that someone would come down from the administrator's office to check as to how the court was operated as a general checkup?

A. Every two years they send a man down to check our court.

Q. So that they were checked, the violations, traffic violations, the books, and whatnot were checked prior to 1959, is that correct?

A. In 1958 a man was down to check all our tickets and all our books and records.

Q. And that was from Trenton?

A. Yes, from the administrative office of the courts.

Q. Now, again I want to ask you this question, I think I asked you this before, you are acting primarily as a police officer, is that correct?

A. Yes, that is correct.

Q. And your duties were the same as the duties of any police officer during the year of 1959, is that correct?

A. That is correct, sir.

Q. Which would have included the apprehension of anyone for the violation of any laws of the state of New Jersey?

A. That is correct, yes.

Q. And did you as an officer, have many many occasions during the year 1959 to exercise that right and that privilege, and that obligation as an officer for other offenses besides traffic violations?

A. I did sir, yes.

Q. Now, would that have included robbery, larceny, burglary, rape and all the various crimes which are committed in any municipality?

A. That is correct, sir,

Q. And you were actively engaged as an officer at all times in those matters, is that correct?

A. I was, sir.

Q. And enforcing the law?

A. Correct, sir.

Q. That is all.

[fol. 272] Cross-examination.

By Mr. Gerry:

Q. Mr. Elwell, how would you characterize the volume of business of the violations clerk during the year 1959 in which you served in that capacity?

A. In 1959 it was the largest volume we ever had in the violations bureau, as far as our court or department is concerned.

Q. Now, do I understand correctly that this was in some way due to the acquisition of a radar machine?

A. That's correct, sir, we used it all year.

Q. And do I understand correctly that the heavy volume which you experienced in the violations bureau during the year 1959, continued over into the early part of 1960 and then ceased thereafter?

A. It did, I don't remember the exact date it stopped, but we had it in the beginning of 1960.

Q. Now, Mr. Elwell, there has been, I believe, read into evidence earlier in the form of a question by Mr. Kaplan and directed to you on any given summons or complaint

that if you as the arresting officer, had not made a change on the ticket—

Mr. Aiken: Your Honor, may we have the question he is referring to.

Q. If Your Honor please, I will ask for a little assistance in finding that particular reference, and I will go on with another question rather than hold the court up. Now, Officer Elwell, you know I assume by now that the charge against you as well as against the other defendants in this matter is that you participated in a conspiracy to obstruct justice.

A. That is correct, sir.

Q. And now, I would like to inquire of you the exact presence or existence of the elements of any secret agreement between any two or more of you in the matter before the court and jury. Now, let's look into the secretive part. [fol. 273] Of the summonses of which you may have made observations, where there were some changes or alterations, were these quite apparent on the faces of the summonses?

A. Very apparent, yes.

Q. In most cases, they were just rough cross outs, weren't they?

A. That's right, scratched out by ball point pen.

Q. And were there not also cases where the cross out was done, or did not obliterate the numbers or writings underneath?

A. That is right, you could still read them under some of them, yes sir.

Q. Did you personally ever come across a summons which any ink eradicator or anything of that nature had been used?

A. No sir.

Q. Would there have been any particular skill acquired or possessed by the person observing that ticket to see on its face there had been an alteration?

A. It was quite obvious, anybody could see it was done.

Q. Now, do I understand correctly also that it was one of your obligations as a violations clerk thereafter by Officer Murray, when he assumed the job in 1960, that you would make monthly reports to the mayor and counsel as to the operation of the traffic bureau?

A. Yes sir, we did at the end of each month.

Q. Was this periodically and regularly done?

A. It was.

Q. Were there, to your knowledge, any omissions, failures to, at the end of any month, to submit such reports to the mayor and counsel?

A. No, there was one definitely made every month, a complete report.

Q. Now, in addition to the monthly reports that covered the operation of the traffic bureau, violations bureau, were there additionally quarterly reports that were sent to the administrative director of the courts of the state of New Jersey?

A. He sent a monthly and a quarterly report to the state and a monthly report to the county.

[fol. 274] Q. A monthly report to the county and what would this cover generally?

A. The monthly report to the county would be a report on all county tickets. in other words speeding or anything that involved the county were as the monthly report to the state involved the state summonses, turnpike speeding and all them, was reported into the state.

Q. So that in addition to the quarterly report to the administrative director's office, there was a monthly report to the state, and a similarly regular report to the county, is that correct?

A. And one to the mayor and council also.

Q. So that we have then periodic reports of the functioning of the violations bureau to the mayor and council, to the county of Camden and to the office of the administrative director and to the State of New Jersey?

A. Yes sir.

Q. To your knowledge during the period that you served in 1959 as the violations clerk, and during the period early in 1960, when I believe you assisted Officer Murray, the new violations clerk, were there any omissions of the filing of these reports?

A. There was not, no sir.

Q. Now, in addition to the reports that were submitted, which you have described for us, was there ever any audit by a competent and independent accountant or accounting firm of the books of the violations bureau?

A. Yes, they were audited, all the books and records.

Q. And would this audit include the cash book?

A. Including everything in the municipal court, tickets, cash book, docket book.

Q. Docket book, tickets, receipts, everything, all papers and instruments incidental to the operation of the violations bureau?

A. Yes sir, everything.

Q. Now, do you know who the auditors were?

A. William Foley. Actually, the company he is with, [fol. 275] I don't know. Actually, the name is William Foley.

Q. Now, was this a local accounting firm, if you know, or an out of state accounting firm?

A. Out of state, I believe from Philadelphia.

Q. And to your knowledge is he the gentleman that you mentioned or the accounting firm any way connected indirectly or directly involved in the day to day operation of the violations bureau apart from the audit?

A. No, they are not, not to my knowledge.

Q. Do you know of your own knowledge what happens to the audit report?

A. I imagine it goes into the state, I am not sure. To my knowledge, I wouldn't know what happened to it.

Q. Now, in addition to the audit which was made by an independent auditing firm, were there any other spot checks or spot audits made?

A. Administrative office of the court spot checked our records.

Q. Now, you recall the most recent date prior to 1959 when this was done by a representative of the administrative office?

A. It was some time in 1958, the man was down, the exact month I don't remember, and then again in 1960.

Q. And again in 1960.

A. Yes.

Q. Would that be near the beginning of 1960, or the middle or end of 1960, if you recall?

A. In March or April, I am not quite sure on the date.

Q. Now, when the representative of the administrative director's office came down to it and made a spot check, would violations clerk have any prior warning at the time he was going to show up and ask for the request to have all the books provided and spot checked?

A. No, he would just walk right in and demand them right then.

Q. And this would be unannounced spot checks, is that correct, sir?

A. That is right.

Q. And is it fair to assume that both you as violations clerk in 1959 and Officer Murray as violations clerk of [fol. 276] 1960, and most of the members of the police department were aware that these spot checks had been made?

A. Yes, we knew it, yes sir.

Q. Now, as a result of these many reports that you have described for us which dealt in detail with the operation of the violations bureau, as a result of any audits which may have been made or as a result of the spot checks unannounced that were made by the representative of the administrative office of the courts, are you aware of any objections as to the operation of the violations bureau which were expressed to you by any of those sources?

A. There was none at all, that I know of.

Q. Would this also be true of the early part of 1960 when you were assisting Officer Murray?

A. There is no remarks about the way it was run, no sir.

Q. Now, Officer Elwell, when you first assumed the duties of violations clerk in Barrington in the beginning of 1959, were you assisted by the outgoing violations clerk?

A. I was for the first month or so or overlapping into the second month, yes.

Q. So that for a couple of months you also had the assistance of the outgoing violations clerk, is that correct?

A. I did sir, yes.

Q. Now, with the exception of the assistance that he rendered to you, and incidentally, do you recall his name?

A. Officer Rehmer, Sergeant Rehmer.

Q. Is he still presently a member of the Barrington police force?

A. He is sir, yes.

Q. Now, with the exception of the instructions and directions that you received for the first couple of months on the job, did you receive any instructions or information relating to your duties and the nature and limitation of your authority as a violations clerk?

A. No, I did not.

Q. Did the Judge of the court at that time beginning of 1959 or the judge, by judge I mean magistrate, here [fol. 277] in Barrington, did the magistrate there in Barrington at any time assist or instruct you in how you were to handle the books for the violations bureau and what limitations of your authority was?

A. No, he never did.

Q. Now, during the year 1959, did any representative of the administrative director of the courts of the State of New Jersey ever contact you and instruct you as to the nature and extent of your duties and obligations and limitations upon your authority as violations clerk?

A. No sir.

Q. Did you receive any pamphlets, any books, any statute books, any resume of the statutory law or the regulations and rules of the state of New Jersey relating to your obligation and your duties and the limitations upon your authority in that office?

A. No sir, I never did.

Q. Now, Officer Elwell, pursuant to the custom of the outgoing violations clerk in giving assistance and instructions to the new fellow that is coming in to that job, did you follow this procedure also when Officer Murray took over in January of 1960?

A. I did, yes.

Q. Now, if you will, can you describe for us the mechanics of the assistance that you would give to—I mean did you actually work with him on the first few occasions when he had to actually tote up everything and make his entry?

A. I did, for the first month of January, and in the beginning of February I helped him.

Q. And is it fair to assume that the basic thing that the violations clerk has to learn was what all these books were about, the cash book, docket book, receipt book, and how to make entries into these things?

A. That is correct, sir, yes.

Q. Now, when you assisted him, did you split up the function in some customary way?

A. Yes, in the beginning when we first started the first time we worked on the books, I showed him how to make [fol. 278] out the receipts and all, how they were done, and the next entry would be in the cash book or rather the docket book, I don't know if it was the first time we worked on them or the second time, I just read off the name and the violations and the amount of the fine, and all, and he entered it in the book so he learned how to do that.

Q. Now, he would then, when you assisted him, have the cash books, the docket book, and the receipt book in front of him, is that correct?

A. That is correct.

Q. And you would have, as I understand it, the tickets or the summonses and the money and cash, whatever it was, attached to each one?

A. That is correct, yes.

Q. Then would these be all in a pile?

A. Yes.

Q. And where did these all come from, where would you get them?

A. From the drawer of the violations cabinet.

Q. Was this the same drawer which was accessible to all the various members of the police department?

A. Yes it was.

Q. And was it in this drawer that by custom and practice, anyone or any officer who received in his capacity as a violations deputy clerk, any fines and waivers across the desk, would put the money and the receipt and so forth?

A. Yes, they all go in this one drawer.

Q. Now, when you took out this pile of receipts or summonses and attached monies, checks, or whatever it happened to be involved, you would then as I understand it, read off to Officer Murray the entry that he was to make in the docket book, is that correct?

A. Yes.

Q. And also the entry that he was to make in the cash book, how much cash was involved in any particular case?

A. That is right.

Q. And would you thereafter instruct him as to the person to whom the receipt should be made out and in [fol. 279] what amount?

A. I would, yes.

Q. And as you went through the ticket, each ticket, let us take the ticket that was on the top of the pile which came to you first, after you had dictated it to Officer Murray, these entries in the various books that he was to make, what would you do with the money?

A. It would be put into a pile, and a ticket would be put into a pile.

Q. And then presumably when you got down to the bottom of whatever accumulation that you had as tickets, you then have another pile of disposed of tickets which had been recorded, is that correct?

A. Yes, that is correct.

Q. And you also had a pile of cash or checks?

A. That is right.

Q. What did you do with the pile of summonses that had already been dictated and disposed of in the sense that they had been recorded in the books by Officer Murray?

A. We had put a rubber band around them and stick them in another file drawer for the year.

Q. Was this file for all of the old matters that were now completed?

A. Yes, all of them, yes sir.

Q. Now, you have your pile of cash and checks, did you also instruct Officer Murray about how to make up a deposit slip?

A. Yes I did.

Q. Then you would, I suppose, tote up your cash and your checks to see what the total amount would be for the deposit, is that the idea?

A. We would add up the money and the checks, and also the amounts on all the receipts, and it would balance out and then the deposit slip would be made up.

Q. And Officer Murray then would make up, under your supervision, the deposit slip and those monies would then be deposited to the account of the Borough of Barrington?

A. That is right sir, yes, to the municipal court account.

Q. What?

A. To the municipal court account, not to the Borough [fol. 280] of Barrington.

Q. Now, after you placed the completed summons pile back into this drawer in which was reserved for that purpose, would there've been from your knowledge of the duties of the violations clerk, would there've been any reason for the violations clerk thereafter to go back in this dead drawer and file through all of these summonses?

A. No, sir.

Q. Now, with reference to receipts, would these tickets have receipts on them when they went back into the moth balls?

A. Yes, they had their receipts attached to them, yes.

Q. Do I assume correctly that after you have dictated the amount to Officer Murray and put on the receipt, he

would then hand it back to you and you would then put it with its proper summons and you went along?

A. That is right, yes.

Q. Now officer, I believe in January the 8th, 1960, which would be approximately seven days or eight days after Officer Murray took over, one of the matters, one of the summonses which were apparently docketed, receipted, and so forth at that time, was the summons which had been issued to Mr. Wright, which the prosecution here has named in the indictment as the one allegedly in which you and one of the others were in some conspiracy to alter, is that correct?

A. That is correct, yes.

Q. Now apparently at that time then, you had dictated to him, to Officer Murray, that the receipt for about five dollars should be made out of this particular charge.

A. I did, yes.

Q. And then as I understand it, correct me if I am wrong, he would hand that receipt back to you and put it with the ticket, and it would go into the pile of disposed tickets, is that correct?

A. That is correct.

Q. Now, under the prevailing system which you have described, did Officer Murray actually see the ticket, the [fol. 281] particular summons involved, or whether or not there was a check or cash attached to it or what amount, you were dictating those things to him, were you not?

A. That is right, he didn't see them because I had them all in front of me. He was sitting down on the other end of the table.

Q. When you took over in the beginning of 1959, and were assisted by Officer Rehmer, who had presided you as violations clerk, did I understand correctly that you had no accounting or bookkeeping training of any kind?

A. No I did not.

Q. To your knowledge, had Officer Murray at any time, had any experience in bookkeeping or accounting?

A. Not to my knowledge, he didn't.

Q. How long have you been on the force, Officer Elwell?

A. Up till now, eleven years.

Q. Do that you would have been on the Barrington police force during the years preceding the spot check by the administrative director in 1958?

A. I went on in 1952, I joined the department.

Q. Now, can you tell us whether the same practices, dealing with the handling of traffic offenses in the violations court of the Borough of Barrington, existed prior to that spot check in 1958?

A. Right from the time I first joined the department, it was the same way.

Q. Always been the same way?

A. Yes.

Q. So that the administrative director it represents in the spot check in some early part of 1959 was at that time examining the same type of practice that existed up to 1959, in the early part of 1960?

A. That is correct, yes sir.

Q. Now, Officer Elwell, you described for us the fact that there was a drawer in the violations cabinet, is that what you call it, into which all summonses and the whole pack, summonses and complaints and so forth, and the receipts and money and so forth, were all put, is that correct?

A. That is correct, yes.

[fol. 282] Q. Now, was this drawer that you described, was it under lock and key?

A. No it wasn't.

Q. To your knowledge, was it required to be so?

A. Not to my knowledge, no.

Q. Would any member of the police force have ready access to that drawer at any time?

A. They would, yes sir.

Q. I may have misunderstood some of the earlier testimony, but I think that there was a suggestion that on some occasions girls, or personnel in the tax department, may have taken fines, am I correct in that or is that incorrect?

A. Mrs. Oberparleiter, who is Deputy Tax Clerk with her job in the tax office, if I am not mistaken, is also a Deputy Violations Clerk and she was a violations clerk at one time a few years back, but she can accept and receive fines too.

Q. Anyone from the tax office, would they have access to the violations drawer?

A. Yes, they had access to it, yes sir.

Q. There is no question, is there officer, that under the law that prevailed in 1959 and 1960, that the members of the police department of Barrington as Deputy Violations Clerk, had the authority to accept fines over the desk when violators would come in and want to pay them in that fashion?

A. They all had the authority, yes sir.

Q. And had they the authority also, to issue receipts when they took monies over the desk?

A. They did, yes.

Q. Had they authority to accept back the hard copy with the plea and the waiver signed by the violator on the reverse side?

A. They did, yes.

Q. Is this practice still prevailing?

A. Yes, we—

Mr. Aiken: What practice. I don't understand the question.

Q. I am talking about the practice of Deputy Violations [fol. 283] Clerk accepting the fines in the police department.

A. Yes, we are still Deputy Violations Clerk.

The Court: Wait a minute now, let me get something straight there, wasn't there some testimony in this case that this whole business of violations clerk and alike changed some time subsequent to the crime alleged in this, and that now an officer cannot be a violations clerk. When you can't be a violations clerk, how can you be a Deputy Violations Clerk. Does anybody know the answer?

Mr. Gerry: That is the answer, I believe, Your Honor, that is my conception of the rule.

The Court: That is already alleged.

The Witness: It has been changed, there has been a change come down on this.

The Court: I thought you said that it was whether or not it was at the present time.

Mr. Gerry: It was, sir.

The Court: Well, as a practical matter, for the benefit of the jury, it does not exist.

Q. So that officer, at the present time and since such time as the system was changed, no officer of the Barrington Police Force are taking fines that go to the violations bureau, is that correct?

A. That is correct, yes sir.

The Court: Incidentally, I sometimes forget and leave the jury sitting there a long while. If any of you at any time feel the necessity for a recess, raise your hand and I will call it. See, I call them for lawyers and for myself, but sometimes I forget the jury, so if at any time you feel the necessity for a recess, raise your hand and I will call a recess.

Q. Officer, physically, how would these tickets and a [fol. 284] couple of these papers be attached when they were, when fines were taken over the desk, and thereafter put in the violations drawer?

A. All of the tickets and the fines and receipts and all would be attached by a paper clip and put in the drawer.

Q. From your experience, were there any occasions when the clips came off?

A. Yes, quite often.

Q. Were they then stapled?

A. They were paper clips, the money was paper clipped to the tickets.

Q. From your experience, was there ever any occasion when those paper clips came off the money and checks and got mixed up or attached to the other summonses and complaints?

A. Quite often they came off them, and quite often I had to take money off different tickets and at times make changes and things like that in court.

Q. Now, Officer, I direct your attention to the various papers which comprise the uniform traffic ticket, which is I understand was employed in Barrington as well as every other police department. Do I understand correctly that that comprised of a hard back summons which was given to the violator by the arresting officer and also a white complaint, a blue or green copy of that complaint, and a yellow copy of that complaint, is that so?

A. That is correct.

Q. Have you left anything out of the traffic ticket?

A. No, there is actually four sheets.

Q. Now, directing your attention to the yellow copy, what function did this yellow copy perform in your understanding?

A. That was the officer's copy, for the officer that issued the summons, that was his own personal copy for his reference and all.

Q. And the officer might retain that yellow copy when he arrested someone and gave him a ticket?

A. Sometimes he kept it and sometimes he's leave it attached with the ticket. There was no set procedure on one way or another.

[fol. 285] Q. And this was not a public record that was kept on file permanently in the violations bureau, but it was simply for the convenience of the arresting officer to remind him what was on the ticket?

A. Yes.

Q. Would this yellow copy be one of the things that would help him if the matter went to court so that he could testify from it and refresh his memory?

A. That is right, he would use it for the reference.

Q. Now, it is my understanding, Mr. Elwell, that the Wright summons was issued during the course of radar. Now, what was the yellow copy usually retained by the officer while working it on the radar or would most often

that yellow copy simply be attached to the whole package and returned to the violations bureau?

A. I think they were all just left attached together.

Q. Now, let us assume that in any given case the violater comes into the police department, and he goes to the violation clerk, or any of the deputy officers, pays his fine, signs his waiver and so on, and the matter is disposed of without going into court. In that particular instance, when you as the violations clerk would come to that period where you are taking all the tickets, and transposing them into your book, making up your deposits and so on, would you on all occasions return the yellow copy to the officer or was it a customary practice not to do that on some cases?

A. Not on all occasions, depending on how busy I was. Sometimes I just leave them attached to the tickets, sometimes I return them.

Q. And were sometimes these tickets simply destroyed?

A. Yes, they were, yes.

Q. And in destroying these, you were not destroying public records of any kind, is that so?

A. No I wasn't.

Mr. Aiken: I object.

The Court: Sustain the objection. The jury will disregard that of not destroying public records.

[fol. 286] Q. Now, if the particular matter had been disposed of over the desk, where you have made your entries, and the yellow copy was destroyed, how would the arresting officer learn what ultimately had happened to that case?

A. Well, if he was interested and wanted to go back to find out, he could always check the docket book, he would find it in there.

Q. He could go back and check the docket book at any time to find out what the disposition was?

A. Yes, it was always available.

Q. Now, if however he had no personal interest in the case, he did not know the violater, no one had approached him, didn't know anything about it, and this was one of

the large number of radar summonses which he had issued, would he have any way of recalling this particular matter if the yellow copy had been destroyed or kept?

A. No, he would not, no sir.

Q. And if it had not gone to court, of course he would have no need for the yellow copy to testify or anything like that?

A. That is right, it was all disposed of in the violations bureau, he was done.

Q. If the arresting officer, whoever he may be, had kept an independent record of all the tickets that he had issued and to whom the dates were and so on, I assume then that he would have some remainder of it to follow up on, if he wished to, is that correct?

A. Yes, if he kept a record, yes.

Q. Was it customary so far as you know for police officers in the Borough of Barrington to keep in independent records out on the road of all the tickets they issued?

A. No, we kept no records at all for ourselves.

Q. Now, was it a practice, Officer Elwell, for the violations clerk, during the course of his recording of the summons and whatnot that had been taken over the desk from violaters, was it the custom for the violations clerk, in order to make sure that the arresting officer knew any- [fol. 287] thing at all about this, and had given his O.K. to the contact the arresting officer independently?

A. I have to ask you to repeat that again. Perhaps I misunderstood you.

Q. Is it the violations clerk, when you had a ticket in your pile, that you were about to record, and make up your deposit slip on, if there had been an alteration on that summons or a change in some degree, would you as the violations clerk and this is the only connection you have with the ticket under this hypothetical, would you go back to the arresting officer to be sure that he had given his O.K. to this change?

A. No sir, I would not, no.

Q. You wouldn't have any occasion to, would you?

A. No sir.

Q. Now, Officer Elwell, in a radar case, for example, payment had been made over the desk and let us assume also that some change had been made on this particular ticket, and that in during the course of the recording of this ticket, the yellow copy was destroyed or not returned to the arresting officer, and let us assume again that the arresting officer which was apparently not the practice, did not keep any independent book or ledger of the tickets that have been issued—

Mr. Aiken: I have to object.

The Court: Don't answer this until the court has had an opportunity to rule. Go ahead.

Q. Now, Officer Elwell, I believe that you have testified that on some occasion, particularly with radar, the yellow copy, the arresting officers copy were not returned to the officer by the violations clerk during the course of the disposition of the matter, is that correct?

A. That is correct, yes.

Q. Now, let us assume that the particular ticket involved some change, which was evident on its face from that form [fol. 288] in which it was when the ticket was issued, some changing made, and also that the arresting officer according to normal practice as you have testified, did not keep any independent record of the tickets that he had issued, and that also that the arresting officer had no particular interest or knowledge of the offender or of the matter, would there be any way in which the arresting officer if this case didn't go to court, would know what the disposition of that matter was?

Mr. Aiken: I withdraw my objection.

The Court: You may answer.

The Witness: There would be no way unless he went to the docket book to check it himself.

Q. Officer Elwell, do you know who followed Officer Murray as violations clerk out there in Barrington?

A. There was Officer Griffner, I believe.

Q. Did he receive any training in the course of his duties?

A. Not to my knowledge.

The Court: Now, we are down in 1961, is that correct?

Mr. Gerry: Yes, this would be 1961.

The Witness: I think they did start a school up for violations clerk, I believe, in '61.

Q. Do you know who started that school for violations clerk?

A. I think it was the administrative office of the courts in, I know Officer Griffner attended. I believe it was in Trenton.

Q. Was there any such school of instruction by the officers of the administrative director of the courts during 1959 when you served as violations clerk?

A. No.

Q. Or 1960 when Officer Murray did?

A. No, he started the first one in 1961, it was a two week course you went to.

[fol. 289] Q. That is all, officer, thank you.

The Court: All right, at this time we will take a short recess. Spectators remain seated until the jury leaves. You may leave.

(Recess taken.)

The Court: All right, Mr. Elwell, you may resume the stand. You may proceed, Mr. Aiken.

Cross examination.

By Mr. Aiken:

Q. Mr. Elwell, in September of '59, were you aware that as violations clerk you had the obligation to account for all monies received by you?

A. I was aware of that, yes.

Q. And were you also aware of that in the case of a speeding violation, the fine was to go to the county and the cost to the municipality, depending on where the speeding violation was?

A. Yes.

Q. All right, some cases went to the state, didn't it?

A. Yes.

Q. In the case involving Mr. Wright, where was the fine to have gone?

A. I imagine in that, I know that it was a county road, the fine would go into the county.

Q. So that out of the fifteen dollars that you received as a violations clerk from Mr. Wright, you knew that you were to account for fifteen dollars, did you not?

A. Yes sir.

Q. And that ten of it was to go to the county treasurer and five to the custodian of funds of the municipality, did you not?

A. At that time all the money was distributed to where it was supposed to go.

Q. You knew that, didn't you?

A. Yes.

Q. Now, did you do that in relation to the fifteen dollars received from Mr. Wright?

A. The check was deposited in October, and the money was distributed as it should have been. Now, as far as Mr. [fol. 290] Wright is concerned, I don't know.

Q. Are you telling me that fifteen dollars had been received from Mr. Wright and was accounted for properly?

A. It was deposited in the bank.

Q. Will you show me where it shows in the docket that that money was accounted for the way you testified it should have been?

A. If I am not mistaken, the ticket was entered into the docket book or cash book into January so there would be nothing in here to show it in October or September.

Q. At any time, Mr. Elwell, did you account for that money properly the way you knew it should have been accounted for?

A. The only thing I had knowledge of in September or October is the check itself, which was deposited in the bank. Mr. Wright's ticket, I did not even have knowledge of in September or October.

Q. Now, Mr. Elwell, will you show me in the book where that fifteen dollars was distributed and accounted for in the manner you testified it should have been accounted for?

A. Well, that would be in your cash book, not in your docket book. The docket book, there was nothing entered in September or October under the name of Mr. Wright, although the check was deposited in October.

Q. Yes, it was deposited, but it wasn't recorded, was it?

A. No, not at that time.

Q. And it should've been recorded.

A. I didn't have the ticket at that time, sir.

Q. Please answer my question. It should have been recorded, shouldn't it?

Mr. Sherman: I object to that.

The Court: Overrule the objection. The question is perfectly proper. He asked why wasn't it recorded. He was violations clerk. Go ahead and answer the question.

A. It should've been, but it wasn't at the time.

[fol. 291] Q. Now, will you show me in the book where you distributed, or where it shows ten dollars of the Wright check went to the county treasurer, and five dollars to the municipal custodian of funds?

A. There is nothing in the cash book distributing it that way.

Q. That is right. You do not properly account for those funds, did you?

A. The check was deposited and the money was distributed, but not under the name of Mr. Wright.

Q. Please tell me whether or not you properly accounted for the funds you received and deposited for Mr. Wright.

Mr. Sherman: I object to that.

The Court: He has already said that as far as he was concerned, he was violations clerk and knew that this went here and this went there. Now, he is being asked a simple question. He says I did it right, and Aiken said well, did you do this, did you know this. The plain question is did you properly account for the money. I think the question is perfectly proper, I will allow it. You may answer it.

The Witness: The money was accounted for, deposited, and distributed, the check, yes sir.

Q. Properly?

A. To my knowledge at the time, yes.

Q. Will you show me where in the book it shows it was.

A. The book doesn't have anything under Mr. Wright's name in September or October, no.

Q. There isn't anything there until January, is there?

A. That is correct, sir.

Q. And that shows what?

A. That shows that it was marked down here on the 8th of January, Mr. Wright, parking, five dollar fine.

Q. And to whom does that show that five dollars went?

A. It went to the Borough of Barrington.

Q. Does it show going to the county treasurer?

A. No, it doesn't.

[fol. 292] Q. No, it doesn't. So that that money is not properly accounted for, is it Mr. Elwell?

A. Mr. Wright's check was accounted for when I deposited it.

Q. Please answer my question.

A. I am sorry, I cannot answer that, sir. To my knowledge the check was deposited and accounted for at that time.

Q. It is a very simple question, Mr. Elwell. Did you properly account for the fifteen dollars you had gotten from Mr. Wright?

A. There was no accounting made until January on his ticket.

Q. And the accounting that shows under the date January the 8th is not a proper one and you know it, don't you?

Mr. Sherman: I object to that.

The Court: Sustain the objection. He has already said that in his opinion it is. It will be for the jury to decide whether it is or not. Now, let's not belabor the point. You've asked him, he's already said that in his opinion it was accounted for or I won't even go that far, he has answered the question. Whether he has answered it directly or not, or whether it is or it is not a proper answer will be for the jury to decide. Now, we have asked him three or four different times, we've gotten the various types of answers, and it is up to the jury to pass upon it as far as credibility and the answer is concerned. Move on, next question.

Q. Now, you have testified I think, Mr. Elwell, that there was some eleven hundred tickets issued in 1959?

A. That is correct, sir, yes.

Q. And that this was a heavy load?

A. Very heavy, yes.

Q. Now, am I incorrect when I say that that amounts to about 25 tickets a week?

A. We never broke it down that way, our amount varied each week, sometimes we could have over a hundred.

[fol. 293] Q. On the average, it amounts to about 23 a week?

A. Well, if you average it down, sometimes we have a hundred tickets a week or a day.

Q. It would average to 23 a week, wouldn't it?

A. If you would average it down, I would imagine yes.

Q. And on a daily basis, it's about three tickets a day, isn't it?

Mr. Sherman: I object to this.

The Court: Overrule the objection. He is saying an average. You may cross examine as far as some weeks being more than others. The question is proper and I so rule.

Q. And there were occasions, were they not, when you were violations clerk that you performed some of the duties of violations clerk in your regular tour of duties as a policeman?

A. You mean out on the road, or—

Q. Anytime, anywhere, Mr. Elwell.

The Court: No, you should strain that out as far as bringing up all of the books and everything else. Obviously he can't do that under the rule, but I think you should specify if you mean when he came back to it, while he was still a policeman, could he do this, could he work on the books. Now, did you do that?

The Witness: Not while I was on duty, no sir.

Q. And you did receive extra pay for this job, did you not?

A. I received three hundred dollars for the year.

Q. Yes, and so the system was to switch the job around from year to year so that each officer would have an opportunity to obtain the extra pay, isn't that right?

A. That is correct.

[fol. 294] Q. Did you ever make any complaint that the job was too much for you in 1959, and if so, whom did you complain to?

A. I complained to the chief, I think it was in June or July that I wanted to get out of the job that I couldn't leave it until September. I was refused.

Q. Did you ever tell the judge you complained about it?

A. No, I didn't.

The Court: By judge, you mean of course the local magistrate?

Q. Yes, the magistrate. Did you ever talk to the Borough auditors, this Mr. Foley that you mentioned, or what was that name?

A. Yes sir.

Q. Did you ever talk to him about the proper way to make the entries in the book?

A. No sir.

Q. You never talked about it to the judge?

A. No sir.

Q. You never talked to the chief about it?

A. No sir.

Q. You didn't ask anybody except Robert Rehmer, the prior clerk?

A. That is correct, Robert Rehmer.

Q. And you didn't ask any questions or instructions from anybody else?

A. I was never offered them.

Q. Now, didn't you, during that period, have available to you the statutes or the rules of the court relating to the municipal court?

A. They had quite a few law books and different law books on the offices.

Q. Didn't you have the rules of court relating to the municipal court?

A. It was probably in there with the rest of our books.

Q. Yes, and you referred to them occasionally, didn't you?

A. I never did, no sir.

Q. You never did?

A. I never had the occasion to.

Q. No question ever arose that you couldn't answer that you had to refer to the book for?

A. I always referred to the judge if I had any problem. [fol. 295] The book was, it belonged to the court.

Q. Now, I think you said that your books were audited and there was never any complaint made about them, and they were always in good order, is that right?

A. That is correct.

Q. Have you got the cash book there in front of you?

A. Yes I have.

Q. Will you refer to that please, there is no reference to any check received from Robert Wright on October of 1959, is there?

A. There is no special marking made for any check at any time. We don't mark it as being a check or cash or anything.

Q. Well, as I see it, Mr. Elwell—

A. Mr. Wright's name doesn't appear in October of 1959 in the cash book, no.

Q. There is no entry showing that you received and deposited fifteen dollars from Mr. Wright, is there?

A. Not from Mr. Wright, no.

Q. And each of a receipt is itemized as to ticket and name and offense, is it not?

A. That is correct.

Q. Now, can you tell from looking at this check that this check marked S-6, when it was deposited?

A. The Camden Trust stamp on here is October the 16th.

Q. Yes, and did you make a deposit on October the 16th?

A. It was either the 15th or the 16th, I don't know when they stamped it.

Q. Can you tell from looking at the book?

A. Yes, the deposit was made on the 16th.

Q. That is right. That is the same date that this check was deposited, isn't it?

A. Correct.

Q. Now, as far as you know, this check is included in that amount, isn't it?

A. Correct.

Q. What is that amount you deposited on the 16th?

A. One thousand two hundred nine dollars.

Q. And was that all cash or was it all checks or was it partly cash and partly checks?

A. Well, I have no way of telling by the cash book, but I imagine it was checks and cash both, it normally was.

[fol. 296] Q. So, if you deposited a check that doesn't show in the book?

A. That is correct.

Q. You would have deposited fifteen dollars more than shows in the book, wouldn't you?

A. No, the book and the deposit is always balanced out.

Q. That is right, they do balance out, but it doesn't show the Wright check, does it?

A. The check was deposited this time.

Q. That is right, so that the Wright check included in that deposit, it must be some other receipt that was not deposited, isn't that right?

A. I am afraid I don't follow you on that question, Prosecutor.

Q. Well, all of the receipts from November that you made, that you received from November 30th, the date of the last deposit prior to October the 16th, are listed in the book, are they not?

A. They are, yes.

Q. That's right, except the Wright one.

A. Wright.

The Court: Let's get something straight here for the jury, when they are listed in the book, are they listed under a certain name so that when the whole thing is added up and it amounts to a thousand dollars or whatever—

The Witness: That is correct, yes sir.

The Court: All right, and you deposited the check on that day and as I understand it Wright's name is on the book as shown a deposit of money that you received from Wright on that case, is that correct?

The Witness: That is correct, sir.

The Court: All right, continue.

Q. So that the deposit should have been fifteen dollars more than was shown in the book, shouldn't it?

A. Not necessarily, if that check was deposited against one of the other names on the book.

Q. Well now, you have accounted for all the monies on [fol. 297] all the others in the book, haven't you?

A. Ten and five, fifteen dollars on each one, it could've been this check—

Q. Well, as far as the record shows that you prepared, you have accounted for all the monies on all the other receipts between the dates of those two deposits, haven't you?

A. Yes.

Q. So far as your deposit of October the 16th, if everything was deposited that is shown in the book plus the Wright check, it should be fifteen dollars more than is shown on the book, isn't that so?

A. Not necessarily, no.

Q. Well, will you explain to me, Mr. Elwell,—

A. I am trying to, sir as I said, that check was deposited on another ticket. In other words, marked on another summons here, and by mistake Wright's ticket was not here, Wright's ticket I know definitely was lost at that time. That it why it wasn't here at this time.

Q. Well, are you telling me that on one of those tickets that I listed from October 1st to October 16th, you did not deposit the money you show you deposited?

A. That was all deposited, yes.

Q. All right, it was all deposited. And include the check, the Wright check in the amount of fifteen dollars, and it amounted to twelve hundred nine dollars, didn't it?

A. Yes.

Q. So that you had to include the Wright check in that deposit, that had to be fifteen dollars reduced from some other receipt, isn't there?

A. No sir, no.

Q. Well, are you telling me then that you didn't make the deposit for the receipts shown in the book?

A. All the receipts shown in the book and the total deposited was deposited on October the 16th.

Q. That's right, all the receipts in the book total what?

A. Total the amount of twelve hundred nine dollars.

[fol. 298] Q. Right, but the Wright check isn't shown, so that would increase the deposit to twelve twenty-four dollars, wouldn't it?

A. The Wright check is possibly shown in there on another summons.

Q. Well, show me where it is shown in your cash book.

A. I can't show you, I can't pick it out of all these tickets.

Q. Unless it's not—

A. It definitely is sir, it had to be.

Q. Well, you show me where you accounted for it in the cash book.

A. I couldn't show you because Mr. Wright's ticket wasn't found until January the 1st or the first part of January.

Q. I am talking about the check.

A. There is no way of showing which is the check and which is the cash from the cash book. It is not marked that way.

Q. Well, you say that Mr. Wright's ticket wasn't found until January 1st.

A. Or until the first part of January, the end of December.

Q. Now, tell us how it happened to be found.

A. Well, I was changing, and officer Murray was taking over violations, I cleaned out the cabinet, all our books and records and all, and the old correspondence so it would be all new when he took over, and when I took out the file drawer that we kept our tickets in and the other papers, I found some papers and Mr. Wright's ticket was there with a five dollar bill on it. I put this here with the rest of our tickets we had in the drawer at that time.

Q. And did Mr. Murray notice this?

A. No, not at the time he didn't, no.

Q. Did you tell him?

A. No.

Q. Didn't he raise any questions about this old ticket?

A. I don't even think he even seen the ticket.

Q. Did he raise any question about it?

A. No, he did not.

Q. The date of the offense appears on the docket in [fol. 299] his handwriting, doesn't it?

A. That is correct.

Q. And didn't he raise any question about it?

A. No, sir, there was no question to be raised.

Q. Now, Mr. Elwell, you say there was a five dollar bill attached to this ticket that you mysteriously found in the drawer around January 1st?

A. There was a five dollar bill attached to the ticket I found.

Q. Where did the five dollar bill come from?

A. I don't know sir, it was attached to the ticket.

The Court: Are you talking about the Wright ticket now?

The Witness: Yes, we have monies or checks attached to the ticket.

Q. Well now, Mr. Wright came to the station on October the 14th to pay his ticket, which he did, by check of fifteen dollars. Wasn't that check attached to his hard copy?

A. I don't know, I didn't receive the check off of him sir.

Q. Well, you deposited it, you must've seen it between the time it was received and the time you deposited it.

A. I deposited the check, I seen the check, but I did not see the ticket.

Q. You deposited the check without seeing the ticket to which it related?

A. It was on the ticket, apparently, but it was Wright's ticket, I know it was Wright's ticket definitely.

Q. And you don't know where the five dollars came from that was attached to the ticket when you say you found it around January the 1st.

A. It probably came from the ticket that Mr. Wright's check was on.

Q. It came from what?

A. The ticket that Mr. Wright's check was on most likely. There was a mix up in the check, and the check got attached to the wrong ticket, and the five dollars got attached to the Wright ticket and it was found in January.

Q. Well, as far as you know, there are not any other [fol. 300] mistakes relating to any other tickets, are there?

A. Not that I know of.

Q. And if that was true, there would be?

A. Not necessarily.

Q. But your books balanced out.

A. That is right. If it was a fifteen dollar check on the ticket, it would be marked as fifteen dollars.

Q. Then if you received some cash for another ticket, you would give a receipt, or make up a receipt for that cash, wouldn't you?

A. Unless the ticket was going to be changed or something, or there was a mistake or something in it, yes.

Q. But if the receipt was made up for the actual cash, it was received from some other ticket, the auditors who would check that receipt against that book, wouldn't they?

A. Yes, and—

Q. And if five dollars from that cash were attributed to the Wright ticket, they would find that there was five dollars left and there should have been in connection with the other ticket, wouldn't they?

A. Apparently there was only five dollars on that ticket that Wright's check was on.

Q. That is what you said before. I am trying to find out how that could be.

A. That ticket was a parking ticket, not a parking ticket, but had been changed to parking.

Q. Yes, if somebody else had paid say fifteen dollars in cash for speeding, and it was changed to parking, and five dollars only attached to it, to the ticket—

A. I didn't say that, sir.

Q. What?

A. That wasn't my answer, sir. My answer was that there was a five dollars on the ticket, apparently on the ticket, that was marked parking and it got mixed up with Wright's ticket or that ticket got mixed up with that ticket and that is my only conclusion to it.

Q. Well now, when you found the five dollars on the [fol. 301] Wright ticket, you knew it had been changed, didn't you?

A. Yes I did.

Q. And you knew that it had been issued by Officer Holroyd, didn't you?

A. Yes I did.

Q. And you knew that in order for it to be changed, Holroyd had to consent, didn't you?

A. Not necessarily.

Q. Not necessarily?

A. I didn't know if he consented to it or not.

Q. Well, didn't you tell Mr. Rigg that he had to consent if there was to be a change?

A. I said as far as the Wright ticket, I don't know whether he did or not, I don't know what happened on the Wright ticket.

Q. Didn't you tell Mr. Rigg that in order for a ticket to be changed, the issuing officer had to consent?

A. I think I did in my statement, yes.

Q. So that if that is true then Holroyd had to consent to the change, didn't he?

Mr. Sherman: I object, if Your Honor please. He is being asked whether he knows whether he did or not. He can be asked what the custom is, or what he did, but he can't answer what this gentleman did.

The Court: I will permit it. He is subject to cross examination. The same rule will then prevail when he is on the stand as when he is talking as when he is in the statement because he is subject to cross examination on the stand whereas a piece of paper he is not. You may answer it. Do you understand the question?

The Witness: I think I do, Your Honor, but he didn't consent to me, I didn't ask him for the change, so I don't know.

The Court: No, what the Prosecutor is saying to you is this, that in your statement apparently his contention is that you said no ticket could be changed or in effect no ticket could be changed unless the officer who gave the [fol. 302] ticket consented to the change. Now, what he is saying to you, you said that in your statement, now on the stand, is that true, did Holroyd as far as you know, consent to the change on this particular ticket?

The Witness: It is possible, yes sir.

Q. And it was Officer Murray's responsibility, was it not, to put the proper entries in the book relating to the Wright ticket on January the 1st?

Mr. Sherman: I object, I think that is for the other gentleman—

The Court: I will permit it. He knows the duties of a violations clerk. He says he did. At least to some degree, and as far as he is concerned, Officer Murray was at that time. This was in January. Officer Murray succeeded him as violations clerk. I will permit it, it is proper.

The Witness: In January, in the beginning of February, Officer Murray entered in the book what I read off to him from the tickets.

Q. Well, please answer my question, Mr. Elwell.

The Court: Well, in effect he has said the same thing, the violations clerk is the fellow that actually physically puts it in the book.

The Witness: Yes.

The Court: Murray was violations clerk?

The Witness: Yes.

The Court: So it was Murray's obligation to put it in the book?

The Witness: Yes.

The Court: All right, go ahead.

Q. So that with this five dollar bill that was recorded on January the 8th, by Officer Murray, there was in effect twenty dollars received in connection with the Wright ticket, wasn't there?

A. I am afraid I don't know what you mean on that one, [fol. 303] Prosecutor.

The Court: Well, the court doesn't understand that either.

Q. Well, you received fifteen dollars in October from Wright?

The Court: Without getting this thing any more confused, if it is incorrect, you correct me. He got a check for fifteen dollars, somebody had a check for fifteen dollars from Wright, and then he says he has entered them up in the books and so on and so forth and the only explanation he can give is that five dollars that belonged to somebody else was by mistake put on Wright's ticket, and Wright's fifteen dollars was charged to somebody else's ticket, or something to that effect, is that what your testimony is?

The Witness: That's right, Your Honor.

The Court: Then his general theory is that when the ticket was found, the five dollars which belonged to somebody else's ticket was on Wright's ticket, is that your explanation?

The Witness: That is right.

The Court: All right.

Q. Now, have you made any effort at any time since the issuance of the ticket, to Murray, to determine where the mistake you are talking about occurred?

Mr. Sherman: I object. First of all, it wasn't Murray. I think he is referring to the Wright ticket.

The Court: All right, let's get it straightened out. The ticket is Wright. Murray is an officer, so Murray has no ticket.

Q. Have you made any effort since the Wright ticket was issued to determine where the so-called mistake was made?

A. I didn't know there was a mistake made until I was [fol. 304] questioned by the Prosecutor Kaplan, and ever since that time, he has had possession of all the tickets so I would have no way of checking it.

Q. You didn't ask to see the books or check them out, did you?

A. They were state property or impounded by the state.

Q. Did you ask?

A. No, I did not, I did not ask.

Q. You didn't ask anybody, did you?

A. No, I did not.

Q. You didn't ask the auditors?

A. No I did not.

The Court: The answer is he did not ask anybody. Now, why do we have to go all through the auditers. The auditers are included in anybody.

Q. Now, there isn't any way that the auditers would have of knowing that you received the Wright ticket, and deposited it on October the 16th, 1959, is there, unless there was an entry in the book, or a receipt made up?

A. Not that I know of, there wouldn't be any way.

Q. No, they couldn't be checked, could they?

A. Not to my knowledge.

Q. And as far as they could tell, the only monies received in connection with the Wright ticket was the five dollars that was entered under January the 18th, 1960, isn't that right?

A. That is correct.

Q. So that whether they found any discrepancy in relation to the Wright ticket is meaningless, isn't it?

A. That is true.

Q. Now, do I understand you to say that there was no system in the police headquarters for locking up this cash or these checks and so forth that came in connection with traffic tickets?

A. That is true, it was left open at all times. It wasn't locked.

Q. Open?

A. There were two metal doors on the cabinet, they were not locked.

Q. Anybody could go in there?

A. That is correct, yes.

[fol. 305] Q. And there was no record made, separate record of what cash or checks went into that drawer?

A. No sir, only the cash book when it was processed, that is all.

Q. Now, you said something about notations being attached to a card in relation to the ticket. I didn't understand what you meant. Can you explain that?

A. I don't remember my saying myself that there was. I think I was asked a question, I said yes, sometimes there was something marked or a ticket was supposed to be changed or something, there was a mistake on the ticket or it should be voided out, and the officer made a mistake.

Q. Well now, Mr. Elwell, in that connection you know that there was a proper procedure set up, don't you, to take care of mistakes made in connection with tickets?

A. As far as the ticket being voided, there was, I know that.

Q. Yes, and there was that procedure?

A. Well, if the ticket was damaged or voided out for any reason, it would be marked void and a report would be made out on it.

Q. Yes, and for any reason you issued a ticket, in error, or something like that, you would mark that in what is called a traffic control docket receipt, wouldn't you?

A. Traffic control sheet, yes.

Q. And issue a new ticket, if necessary?

A. That is correct, yes.

Q. But you didn't do that in connection with the two cases you mentioned, did you. Weren't you questioned by

one of the defense counsel about two cases where you said that you dismissed the ticket?

A. That is right, I have dismissed two of them.

Q. And you also testified in connection with one, I believe, that you told the judge about it, didn't you?

A. Afterward, I think yes I did speak to the judge about a mistake, I am not sure but I think I did speak to him afterward.

[fol. 306] Q. You are not sure on that?

A. To my knowledge I did, I think I mentioned it to him.

Q. Do you remember being asked about that ticket by Mr. Rigg?

A. Yes, I think it was by Mr. Rigg and Mr. Kaplan both.

Q. Now, this case was the bulldozer case, Mr. Elwell, do you remember being asked by Mr. Rigg, "Did you accomplish this with the advice, consent, or approval of the judge, and answering it I don't think so, sir, I am not sure on that point."

A. That is right, I didn't ask him before I marked it dismissed if I could do it or anything.

Q. As a matter of fact, you never told the judge that you changed any ticket, did you?

A. I never went directly to him and told him, no.

Q. And outside of the police department itself, you never told anybody else, did you?

A. Not to my knowledge, no.

Q. And you never called these changes and anything else in relation to these downgradings to the attention of these two people you mentioned that came down from the office of the administrative director of the courts?

A. They were aware of it, yes.

Q. Did you call it to their attention?

A. It was called to their attention in their own investigation.

Q. Did you call it to their attention?

A. No, I did not personally myself.

Q. Now, were you present when they were there on both occasions you mentioned?

A. I was present on one occasion.

Mr. Sherman: I'm going to object to this because I don't know which we're talking of. We are talking about the present investigation by the Deputy Attorney General of the Prosecutor's office, or we are talking about—

Q. You testified that somebody from the administrative [fol. 307] Director's office came down in 1958 and made a spot check, did you not?

A. Yes.

Q. Now, were you present when that person came down?

A. Not in 1958, no sir.

Q. And do you know who that person was?

A. I think the name was Aiello or something like that, I am not sure of his name.

Q. So that if you weren't present and you don't know what was called to his attention, do you?

A. Well, I wasn't there to see what was called to his attention, no sir.

Q. You didn't hear, either.

A. I wasn't there to hear it, I heard afterwards, yes.

Q. Were you present in the instance in 1960?

A. I was, yes.

Q. And who was that?

A. I think it was Mr. Davis, I believe it was.

Q. And did you call these changes to his attention?

A. I didn't call them to his attention, no.

Q. Well, did anybody in your presence while he was there, call them to his attention?

A. No, we didn't call it to his attention personally, no.

Q. All right, and you knew, didn't you, that he was down there to check on these things like that?

Mr. Sherman: I object to things like that.

Q. Changing tickets, Your Honor.

Mr. Sherman: I object to that.

The Court: He either knows or he doesn't know. He says a man came down from the office to spot check this that or

the other thing. If he doesn't know, he can say so. He says he knows he was there, if he knows the reason why he was there, let him say so. If he doesn't know, let him likewise say so. Repeat it please.

(Reporter repeats question to witness.)

[fol. 308] A. No, I didn't know that.

Q. You heard Mr. Wright testify, didn't you, that he came over to pay his fine and didn't pay it, and that he didn't ask anybody to intercede for him?

A. That is correct, yes.

Q. Do you know of any reason why the Wright ticket should have been changed?

A. Except by my mistake, no.

Q. Did you tell Mr. Rigg that there would be only two reasons which tickets could be changed?

A. I can't remember right now what I did tell Mr. Rigg, sir, if that is in my statement, I imagine it was.

Q. Do you remember him asking you about why you changed the tickets?

A. Yes, I know he asked me, I told him on account of hardship cases.

Q. And what else?

A. I told him for friends and I don't know what else, to tell you the truth.

Q. Yes, friendship and hardship, there was not anything like that involved here, was there?

A. In the Wright case?

Q. Yes.

A. No sir.

Q. And you also told Mr. Rigg that in every case where there was a change, the offender, the traffic offender knew about it?

A. To my knowledge, he always did, yes sir.

Q. Mr. Wright didn't know about it, did he?

A. Apparently not, sir.

Q. And as far as you know,—

A. As far as I know, he didn't.

Q. And you heard him testify that he didn't know about it until the investigation came—

Mr. Sherman: I object.

The Court: Sustain the objection. He has already said Wright didn't know anything about it, so what difference does it make?

Q. Now, in your procedure, changing the tickets, Mr. [fol. 309] Elwell, were they changed before or after the offender appeared with the hard copy?

A. I imagine it would be after, if I am not mistaken.

Q. Yes, it would be after, wouldn't it, so that you could change the hard copy.

A. As far as I know, somebody would bring it in or he would bring it in or it would be sent in in the mail, the hard copy woud be there, I believe in most cases, yes.

Q. And in the Wright case, Mr. Elwell, there are places on the Wright ticket that is now marked S-2, to show a disposition either in the violations bureau, or in court, are there not?

A. Yes there are, on the back of this complaint.

Q. Are they filled in on the Wright ticket?

A. No, they are not.

Q. And if it is anticipated through the violations bureau, what does that form call for to be put on in the way of information?

A. There's a block for the amount of the fine, and the costs, and the date which we never filled out.

Q. Well, it might have helped you in keeping your books, wouldn't it?

A. Not necessarily, when we had a receipt, we went and entered it in the book by the receipt, not by the back of the summons.

Q. Well, in the Wright case, the receipt isn't accurate, is it?

A. The receipt is for five dollars, that is what it had with it, so—

Q. But it isn't accurate, is it?

A. To my knowledge, it was at the time, yes.

Q. Well, you know you received fifteen dollars from Mr. Wright, don't you?

A. I know this now, yes sir.

Q. Now, did you change any of Holroyd's tickets?

A. I don't know if I did or not.

Q. You don't recall?

A. I don't recall any definite ticket, no.

Q. Did you change any of Murray's tickets?

A. Not that I recall.

[fol. 310] Q. Did Mr. Murray change any of yours?

A. I don't remember him coming to me, no.

Q. Did Holroyd change any of yours?

A. Not to my knowledge.

Q. Well, Mr. Elwell, I show you a batch of tickets here and ask you if you issued the ticket I am handing you.

The Court: Incidentally, you better get that thing out of there before it gets all mussed up, that is in evidence.

Q. Is that your ticket?

A. Yes, I issued this summons.

Q. You issued it and you signed it?

A. Yes.

Q. And is it changed?

A. That is correct.

Q. Who changed it?

A. I can't tell you who changed it, it is a scratch out mark, I possibly did, I don't know.

Q. Changed with your own consent?

A. Well, if I changed it, I probably gave myself consent, I don't know who changed it, I could have, there is nothing on there to identify the person that changed it.

Q. Who issued the receipt?

A. Officer Murray.

Q. For how much?

A. Five dollars, parking.

Q. And what was the original charge?
A. 39:4-98.
Q. That would be speeding?
A. That would be speeding.
Q. And the minimum fine for speeding is what?
A. Ten dollars and five dollars.
Q. And the receipt shows five dollars?
A. That is right, sir.
Q. May I have marked for identification, Your Honor?

The Court: It will be so marked.

(The aforementioned article received and marked as Exhibit S-9 for identification.)

[fol. 311] Q. I show you another ticket and ask you if you can show me who issued that ticket.
A. Issued by Officer Murray.
Q. Is it changed?
A. Yes it is.

Mr. Sherman: I am going to object to this first one, I don't know which ticket he is talking about. I am trying to follow the indictment where I only see the one act, and so far as the Prosecutor has—

The Court: He has already ruled that the condition of one act set forth in the indictment, there may be other acts, even though they are not specified in the indictment.

Mr. Sherman: May we know which one.

The Court: I would suggest for the benefit of all concerned at least name off the alleged defendant. Now, what is the name on that first ticket?

Mr. Aiken: Mr. Sherman is perfectly free to look at them.

The Court: Let's not be technical. I'm perfectly free to look at them too, if I want to walk around, but give me the name and we'll all know and then everybody won't be coming up here to look at it. What is the name?

Mr. Aiken: Rossi.

The Court: All right, the first ticket is Rossi. What is the next ticket you asked him in here?

Mr. Aiken: H. A. Murphy.

The Court: All right, you are still free however, gentlemen, to come up and take a look at the ticket if you want to.

Q. I forget who issued that ticket, Mr. Elwell.

A. Officer Murray.

Q. And, is it changed, and if so, from what to what?

A. The matter is changed from speeding to parking, I imagine.

[fol. 312] Q. You imagine?

A. Well, it is scratched out from where the speeding numbers would be, I can't read the number of the violation on this.

Q. Well, if you look at one of the copies, maybe you can tell there.

A. Well, it looks like it could be 34:4-98 under there.

Q. At least it was an operating offense, wasn't it?

A. Yes.

Q. And the minimum fine for a speeding operating offense.

The Court: What do you mean an operating offense. I have heard that throughout the case. What is an operating offense?

The Witness: A moving violation, Your Honor.

The Court: All right, in other words, the motor vehicle is moving.

The Witness: Yes.

The Court: And of course, the case of parking, it is not moving.

The Witness: That is not a moving offense.

The Court: All right, thank you.

Q. The minimum fine is what?

A. Well, if it is speeding, it would be ten dollars and five dollars cost.

Q. Yes, and the receipt on that one is for how much?
A. Five dollars, parking.
Q. I will ask to have that marked for identification, Your Honor.

Mr. Gerry: Your Honor, I wonder if I might have Mr. Aiken give us the numbers on these tickets.
Mr. Aiken: 3916, issued to M. D. Carson.
The Court: All right, it may be marked for identification.

(The aforementioned article is received and marked as Exhibit S-11 for identification.)

[fol. 313] Q. Will you look at that, and tell me whether or not you can tell you issued that ticket?
A. D. F. Murray, Officer Murray.
Q. And is it changed?
A. Yes, it is.
Q. From what to what?
A. There is no statute number for what it was, but there is a speeding, a mark in the speeding block, and it was changed to parking, a Borough Ordinance.
Q. And is there a receipt attached?
A. Yes sir.
Q. And how much does it show?
A. Five dollars.
Q. Now, the next one I show you, Mr. Elwell, is number 4611, issued to one Louis Rosen, and ask you if you can tell who issued that ticket?
A. Lieutenant Holroyd.
Q. And has that been changed?
A. Yes it has.
Q. From what to what?
A. From a speeding to a parking in a prohibited area.
Q. And is there a receipt?
A. Yes there is.
Q. Is there original and copy of a receipt there?
A. Yes.

Q. That means that the offender didn't get a separate receipt, doesn't it?

A. Well, there were only two copies and they are both here, so I imagine that they didn't get a receipt.

Q. And the receipt shows what was received?

A. Parking, five dollars.

Q. Now, will you look through this other batch of tickets that I have here, and tell me the tickets that you issued?

A. I have one I issued myself, and here is one issued by Officer Murray that I co-signed.

Q. May I see that one please. I don't think I asked you to have this Rosen ticket marked for identification, Your Honor.

The Court: It will be so marked.

(The aforementioned article is received and marked as Exhibit S-12 for identification.)

[fol. 314] Q. Mr. Elwell, you have just handed me ticket number 1472 issued to Carmen Sciatto, issued by him, that has been changed.

A. Yes, it has been.

Q. From what to what, can you tell?

A. It would be from speeding to prohibited area parking.

Q. And is the original and copy of a receipt attached?

A. Yes they are.

Q. That means the offenders didn't get a receipt for any payment he made?

A. Apparently not, they are both here.

Q. And the receipt is for the offense of parking?

A. That is correct.

Q. Now, of those other tickets in front of you, excuse me, me I have this marked for identification?

The Court: It will be so marked.

(The aforementioned article received and marked as Exhibit S-13 for identification.)

Q. If those tickets in front of you, Mr. Elwell, which apparently you did not issue, did you issue receipts?

A. I issued the receipts on all of these, yes.

Q. All right, are they all changed?

A. Yes, they have been all changed.

Q. And what are they changed from?

A. All of them are changed from speeding.

Q. And all to parking?

A. Yes.

Q. And all the receipts are for five dollars, are they not?

A. I think they are, yes, yes all the receipts are for five dollars, parking.

Q. May I ask to have them marked for identification, Your Honor, and I will give the number and name.

The Court: Wait a minute, take it easy here. Are these gentlemen in any way involved?

Mr. Aiken: Yes, Your Honor, I will bring that out. Can you tell me who issued each of these tickets?

[fol. 315] The Court: When I say involved, I mean allegedly involved and let the record show—

The Witness: This one was issued by Murray and myself, this one by Murray, this one by Murray, Murray, Murray, Murray, Lieutenant Holroyd, Lieutenant Holroyd, and Lieutenant Holroyd.

The Court: All right, give all of those over to them and let them make the notations on them now.

Mr. Gerry: Are they being offered into evidence at that time?

The Court: All marked for identification at the present time. You will be heard as far as their admissability is concerned. Of course, this is not the right time to put them in anyway, they can't go in now regardless of their validity or non-validity of their offering. All of them marked for identification.

(The aforementioned articles are received and marked as Exhibits S-14 through S-22 for identification.)

Q. Now, on all of these tickets that have just been marked for identification, running from S-14 no, S-9 through S-22, did the offenders plead guilty, can you tell?

Mr. Sherman: I object to that question unless it is shown on it, referring to being shown on the card itself, whether they did or did not.

The Court: I think the question better be reframed in accordance with, and after you have had an opportunity to answer each one of those exhibits marked for identification, does it show whether or not the defendants admitted their guilt of the crime charged against them?

Mr. Sherman: Well, Your Honor, I have a further ob-
[fol. 316] jection. These tickets are not by him, they are by somebody else.

The Court: If he doesn't know, he doesn't know.

Mr. Sherman: Your Honor, if you will bear with me for a minute, in the statements which the questions and answers by the Assistant Prosecutor of this gentleman, there is a list of those numbers of tickets, which he has in his possession, which are specifically asked are these yours, and he says no. Do you know whose they are, and he doesn't know. Now—

The Court: No, he doesn't say that, he said they are Murray's, they are—please excuse me a minute, I've got to get my thinking. As far as he is concerned, he said pick out the ones that you personally signed, so he did that. Then he turned around and said now, examine the other ones and he asked him certain questions which followed, when he was all done with that, he had apparently elected to say who they were issued by, and I then asked him the question before he marked them for identification, whether they were allegedly connected in any way with the other two defendants. His answer was I think I can better bring that out or something, and then he showed them again and in front of them, who were they issued by, Murray, Holroyd, and so on and so forth, then I said all right, show them to them so that they may examine them, and they will

be marked for identification. Now, however good, bad or indifferent, the identification is he said Murray and Holroyd. I think that can be inferred that because he was violations clerk he must have been reasonably well acquainted with their signatures and alike. That is the reason. They are not in evidence yet, but as far as I was concerned, they are marked for identification. That is my thinking. Now, I'm not going to ask you if you agree, but did you want to argue against me?

Mr. Sherman: Only this Your Honor, that what I was [fol. 317] trying to bring out to the court is that the Prosecutor is not following the questions and answers as given before. He is contradicting the witness here, these are different questions and answers.

The Court: He doesn't have to.

Mr. Sherman: But that is his own statement, these are his own statements given by the Prosecutor and answered by him and now he is contradicting the Prosecutor and him.

The Court: No, I disagree with that.

Mr. Sherman: May I just read this part of the paragraph.

The Court: You may read it, what are you trying to do, bind him to the statement alone?

Mr. Sherman: Your Honor—

The Court: Well, you are reading out of the statement.

Mr. Sherman: But there is in this statement where it says By Mr. Kaplan "These, he can't identify as being his or not being his," there's a list of numbers which are right here which this gentleman is reading from there.

The Court: Perfectly all right. Let me answer this one that way, how do I know he is telling the truth there, or telling the truth here. I don't know, all that is is a piece of paper, and the court passed over the whole thing, certain things are relevant and they were permitted to the jury. Other things will not be read to the jury because they are not material to this particular issue in front of the other two defendants. I specifically charged the jury that this

statement is binding upon him, and binding upon him alone, and anything he said in that statement, in no way affects either of the other two defendants. Now, the Prosecutor comes along with a brand new piece of evidence, not the same, and he has a perfect right to use that and that of course, is the reason for the court's ruling. He is not producing tickets that various people signed.

[fol. 318] Mr. Sherman: Under that theory, Your Honor, I would like to at this time demand that the Prosecutor bring in all the tickets which are mentioned in here. There is a hundred tickets, and we can have the—

The Court: Your demand for production is out of time. Denied. All right, continue.

Q. Now, looking at those tickets, that have been marked for identification, will you tell us which ones, if you can tell from looking at them, to which the offenders plead guilty of the offenses.

Mr. Sherman: I object to that again, Your Honor, they were not made by him.

The Court: Same ruling. Objections however, may be noted upon the record.

If from an examination of them, it being understood I think you said that on certain of the tickets, and I'm saying this in fairness now, that there was no notation as far as the matter of the person pleading one way or another, I think your testimony previously was that some of the tickets were returned with a check, and the back part will not be filled in where the person was supposed to put a guilty or not guilty charge, is that correct?

The Witness: That is correct.

The Court: So, your answer is that under the circumstances if from looking at those things there, your testimony should be from an examination of them, it looks as if the fellow said guilty or whatever he did say, if there is nothing on there, your answer is you don't know. Perhaps the safest way for you to answer it would be that the ticket itself shows such and such, you see what I mean?

The Witness: Yes, I have nine where the back of the hard copy has a signature under waiver or plea.

[fol. 319] By Mr. Aiken:

Q. Now, as I understand the practice in these cases is to make the change after a person has brought it in or sent in the hard copy?

A. Yes, we would have the hard copy there.

Q. So that in effect those nine people were pleading to the offense of speeding, were they not?

A. Not necessarily.

Mr. Sherman: We are getting into what somebody else is doing. We don't have the people here in court, who have signed them, we are not putting the people on the stand that made out the complaint, we are asking him something that he has no knowledge of.

The Court: He is examining the tickets, he is telling you what the tickets themselves show. I have already told him that, I am telling him from an examination of the tickets, make your answer. Overrule the objection.

The Witness: I am assuming the back, he could be pleading guilty to either speeding or parking.

The Court: See, obviously for two or three years, it's been a long time. I don't expect the man to have a memory of each individual case, so as far as I am concerned, I am ruling that if an examination of those tickets shows this that or the other thing, they are in front of me, he has a perfect right to say what is on the ticket. I couldn't remember them if it was a number of years anyway, if you said a case. I am lucky if I can sometimes remember for a week. Tickets show that all these people signed the tickets, is that right?

The Witness: That is right, yes, not all of them so.

The Court: Well then, you'd better expressly specify that a couple of them didn't sign. That is what I am telling [fol. 320] you.

The Witness: He interpreted me which I started on something else. I told him I have nine or something, I have nine where there is a signature on the back, and there is five that there is not. It is not signed at all.

Q. Now, the ones that aren't signed, is there any other way you can tell whether they plead guilty of not guilty?

Mr. Sherman: I object.

The Court: They are signing a waiver on the back. I suppose the effect of the waiver is that they are admitting and saying well here is my money and I don't want to appear so let's not worry too much about that pleading guilty. Whenever you plead, I figure it's in front of a judge, and I say that guilty or not guilty, this waiver business, it amounts to a guilty or a not guilty, is that correct, they have sent in their money and that was the end of it. That is not the situation there, is that right?

The Witness: They can still waive a trial and still pay the violations bureau. Now, yes.

The Court: Only on certain cases, on speeding up to a certain amount of speeding, is that correct?

The Witness: Yes.

Q. From those four or five that you mentioned, that were not signed on the back by the offenders, is there any other way you can tell me whether they waived their defense and plead guilty.

A. No other way.

Q. How about the receipt, doesn't that indicate something?

A. The receipt indicates they paid a five dollar parking fine, yes.

Q. There is nothing on the ticket itself though?

The Court: All right, gentlemen, it is one o'clock. Come [fol. 321] back at two o'clock. Ladies and gentlemen of the jury, you are now excused for your luncheon recess. Spectators remain seated until the jury leaves. You may leave.

(Noon recess.)

The Court: Mr. Elwell, you may resume the stand. You may continue, Mr. Aiken.

Q. Mr. Elwell, you remember being questioned by Mr. Kaplan, do you?

A. Yes I do.

Q. And you remember being questioned by him in reference to the Wright ticket?

A. I think it was, yes.

Q. And he asked you to explain the circumstances surrounding that ticket and the entries in the docket and then the cash book, did he not?

A. Yes he did.

Q. And you didn't tell him anything about finding the ticket with the five dollars in the back of the drawer, and then dictating it to Murray, did you?

A. Not at that time, I didn't remember that, no sir.

Q. You told him you couldn't explain it, didn't you?

A. That is right, at that time I couldn't.

Q. So that you have remembered that story between December of '62 and the present time, is that right?

A. That is correct, yes.

Q. That is all.

[fol. 322] Redirect examination.

By Mr. Sherman:

Q. Mr. Elwell, I direct your attention to ticket number 4585, do you have that?

A. Yes.

Q. Would you read the name on there, Mr. Elwell?

A. The name of the violator is Anthony M. Rossi.

Q. Did you change anything in that ticket?

A. No, sir, I didn't, not to my knowledge.

Q. And did you issue that ticket?

A. I issued it, yes.

Q. Is there a marking on it at all over the original violation?

A. Yes, it has been scratched out, yes, scribbled out.

Q. Is there any other marking on it, besides just marked out?

A. No other scribbling or marking out, there is an X in the prohibited area for parking.

Q. Now, I call your attention to ticket 4130, Now, did you issue that ticket?

A. This ticket is signed by Officer Murray.

Q. So that you did not issue that ticket, is that correct?

A. That is correct.

Q. And is there any writing on that ticket?

A. Other than our regular information on there, there is scratch marks, scribbled out, that is all.

Q. Now, I call your attention to number 3916, did you issue that ticket?

A. No, this was issued by Officer Murray.

Q. And is there any marking on that one?

A. Any changes, yes, there is scratch marks on it, and there is also printing, parking, Borough Ordinance, it is printed.

Q. I call your attention to ticket number 3916, that you have in your hand.

A. Yes.

Q. Now, was that issued by you?

A. No, this was issued by Murray.

Q. All right now, is there a receipt for that?

A. Yes there is.

[fol. 323] Q. What does the receipt say, signed by whom?

A. Receipt is signed by E. Elwell, per E. O., that is my name, but I didn't write the receipt.

Q. Who is per E. O.?

A. Elizabeth Oberparleiter.

Q. Does she work at the hall?

A. She does, she is the Borough Clerk Assistant.

Q. So that you wouldn't have anything to do at all with the issuance of that receipt, is that correct?

A. No sir.

Q. And it is not your writing, is that correct?

A. Definitely not.

Q. Now, of all these tickets that have been handed to you, that are marked for identification, how many of them are issued by you?

A. The ones here, these three in front of me here alone.

Q. No, all of them?

A. Just two of them.

Q. Now, out of how many are there?

A. There's 14 or 15, I'm not sure, 2 out of 14.

Q. Now, dating back again to the year of 1959, I think your testimony was that there was about nineteen thousand dollars that came in that year for violations.

A. It was a little over nineteen thousand, yes.

Q. And that money was distributed to the county and to the state, is that correct?

A. County, State, and Borough, yes.

Q. Now, which of that money or what parts of that money were distributed to the county, not in respect to the amount, but for what reasons?

A. Well, on most of the speeding and most of your violation cases went to the county except tickets that were issued by State Police, and also tickets when issued for inspection stickers.

Q. And what monies went to the Borough?

A. All the costs.

Q. The costs?

A. The five dollar costs, and parking.

Q. And did you make out checks in those cases?

A. I did, yes.

Q. And were they signed by the magistrate?

A. They were, yes.

[fol. 324] Q. And were they sent to the proper authorities, that is county as well as state as well as Borough?

A. Yes they were.

Q. And the amounts which were sent in accordance with the records which were kept, which were looked over after, and looked over by the public certified accountant, is that correct?

A. Correct sir.

Q. Mr. Elwell, I draw your attention to the particular indictment in this case, and ask you to tell us how many overt acts are in this indictment?

The Court: In case he is not well accomplished in the law, there is only one. One overt act.

Q. And you have seen this indictment before, have you not?

A. I have, yes.

Q. And you read the overt act that was in here?

A. I did, yes.

Q. Were any of the matters which were drawn to your attention on these tickets cited in any place in this indictment under the overt acts?

The Court: Well, I will instruct the jury right now, they need not under the law. So, let us stop this foolishness now. Don't confuse the issue. Under the law, ladies and gentlemen of the jury, in a conspiracy case such as this, the state need only put in one overt act. The state cannot prove a hundred overt acts if they want, they don't have to be set forth in the indictment. They have to prove the illegal agreement to do the unlawful act, or vice versa, and of course secondly, they have to prove at least one overt act in a case such as this. However, the state is not limited to the one overt act. If there are a hundred overt acts, the state can prove them. Now, let's not fool around with any of this foolishness. Let's get on with it. You asked for that specific charge, now you've got it.

[fol. 325] Q. Mr. Elwell, were you questioned as to each and every one of these tickets that are before you prior to today's hearing when the Deputy Attorney General as well as the Assistant Prosecutor asked you questions?

A. Yes I was.

Q. And were the answers that you gave all in this statement that are before us today?

A. They are, yes.

Q. That is all.

Recross examination.

By Mr. Gerry:

Q. Mr. Elwell, in reference to the one overt act that is mentioned in the indictment, this has reference to Mr. Wright?

A. That is correct.

Q. Now, it is my understanding from your testimony in relation to that matter that the Wright ticket that was found by you some time late in December, when you were going to turn over the job of violations clerk to your successor?

A. That is correct, I found it.

Q. And do you recall whether or not you did find the Wright summons, did it have any money or checks attached to it?

A. It had a five dollar bill attached to it, yes.

Q. Do you recall whether or not the ticket had been changed in any way when you found it?

A. Yes, it was marked to parking.

Q. Now, you further testified, did you not, that Mr. Murray didn't know anything about the fact that this ticket was lost or anything else about it, is that correct?

A. That is correct.

Q. And from your recollection, the manner in which you assisted him, he at no time saw this particular ticket or anything associated with it, except in the books.

A. I had that ticket with the other tickets in front of me, and read the information off to Mr. Murray.

Q. Now, I believe that also asked of you was whether or not Mr. Murray ever asked or questioned you about this [fol. 326] ticket, was there ever any reason for Mr. Murray in January of 1960, to know about this ticket, or ask any questions about it?

A. No, there shouldn't have been any question on it. Even as far as the date, because we have often had postpone-

ments for a month or so on a case, so actually there was no question asked on it as far as time and all.

Q. I think that you have mentioned, have you not, Mr. Elwell, that it was the responsibility of the violations clerk to make entries into the docket book and cash book and so on while he was the violations clerk, there was no question about that, was there?

A. That is correct.

Q. And that after January the 1st, 1960, this responsibility became that of Mr. Murray.

A. That is correct.

Q. In reference to the entries into the book, on the Wright ticket which was January the 8th, 1960, despite that fact from your testimony, as I understand it, he did not see this ticket or notice anything about it at any time, other than what you dictated to him?

A. That is correct, I dictated it to him.

Q. He was making the entries into the books and writing up the receipts as you read this stuff off to him?

A. That is what he was learning at the time, how to do that part of the job.

Q. You were also asked, I believe, about whether or not the cash drawer was open, the drawer of the violations cabinet in which you described all of the tickets and checks and so forth were put. Was this right in the police headquarters?

A. Yes, it was right in the police station.

Q. And police headquarters is open 24 hours a day?

A. Yes.

Q. And say assuming there was a police officer in headquarters 24 hours a day.

A. I don't know for sure, back in 1959, there is now, we have a radio dispatcher 24 hours a day, but I don't think we had in 1959.

[fol. 327] Q. For the most part though, was there some officer in the police headquarters most of the time?

A. Yes, either an officer or somebody from the tax office right next door.

Q. I think you mentioned that some time earlier in 1960, a representative of the administrative director's office came down and made a spot check.

A. That is right.

Q. And you were present at the time?

A. I was, Officer Murray and I were present.

Q. And I assume that that was so, because you were both violations clerks or had been over the period in which he was going to look into?

A. That is correct.

Q. And Officer Murray obtained for the investigator the summons that he wanted to look at?

A. He had I guess you would call it a work sheet, and he would mark down the different numbers offhand of tickets, and tell us to pull those tickets out of the files, and would go and get them for him and give them to him.

Q. And was this done, were these taken out for him?

A. Yes they were.

Q. And the ones that you saw him go over, did any of those have any alterations on the face, that you can recall?

A. Yes they did.

Q. Apart from anything that may have been said to you about such, or that you may have volunteered to him about such tickets, did he make any comment to you or to Officer Murray about such tickets?

A. No, he just marked it down on his report and that was all.

Q. Confining your attention to January of 1960 when the Wright summons was actually processed by entering into the books and so on, do I understand that at that time there was simply a five dollar bill attached to the Wright summons?

A. That is correct, there was a five dollar bill on it.

Q. And to your instructions, a receipt for five dollars was written out by Officer Murray from the receipt book?

A. There was a five dollar bill on the ticket, and that's [fol. 328] how I read it off to him, as parking. He made out the receipt and marked it in the book.

Q. So that so far as the first instance when Officer Murray became acquainted with the Wright matter, on that date of January the 8th, 1960, there was no conceivable possibility of manipulating funds in any, because there was only five dollars there, is that correct?

A. That is correct.

Mr. Aiken: I object, this is a conclusion of counsel.

The Court: Reframe your question.

Q. There was only five dollars attached to the Wright summons at that time, January of 1960?

A. That is correct.

Q. And a receipt for five dollars was made out, was it not?

A. Correct.

Q. And an entry of five dollars was placed in the book, in the docket book, in the cash book, in both?

A. Yes.

Q. Now officer, so far as the understanding to which you have eluded earlier, which existed between some members of the Barrington police regarding the prior consent of the arresting officer to any change in a ticket which he issued, which was based upon any written regulation promulgated by the Chief of Police or Director of Public Safety?

A. No, we didn't have any written order or anything on it at all, no sir, common practice.

Q. Had this come from any source other than simply an informal understanding?

A. No sir, just an informal understanding.

Q. Were there any meetings held within the police department that this was to be done?

A. No sir, there were not.

Q. No formal meetings or anything?

A. No sir.

Q. Now, in a ticket on which the face has been changed in some way, or altered, can the arresting officer, or did

[fol. 329] it necessarily follow or not from your experience in the department, that the violations clerk made that change?

A. No, not necessarily, no.

Q. Anyone in the department who had access to the drawer could have made that change, could he not?

A. That is correct, anyone could've, yes.

Q. Mr. Aiken, in asking you a question earlier, Mr. Elwell, I believe asked you whether or not you stated before that in order to change any police summons issued by another officer, whether or not you had not said under those conditions that the officer changing the ticket had to clear it or get the consent of the issuing officer. Now, is that necessarily so?

A. A lot of occasions where you couldn't possibly have seen the other officer, due to working shift and all that is when it could've happened.

Q. Were there any notations made on the ticket that had been changed by the arresting officer signing it, or otherwise indicating that he had?

A. No.

Q. I think that's all.

Recross examination.

By Mr. Aiken:

Q. Mr. Elwell, you did tell Mr. Rigg under oath that in order for a ticket to be changed, it had to be done with the O.K. or consent of the issuing officer, didn't you?

A. I did, yes.

Q. Are you telling us that that is not true?

A. I am saying that if he couldn't contact the other officer, he could be on vacation, he could be working a different shift, possibly he could've changed it without his knowledge.

Q. I am asking you what you told Mr. Rigg under oath is that true or is that not true?

A. Yes, to the best of my knowledge, it is true.

Q. But you said to him that it had to be O.K.'d or consented to by the issuing officer, didn't you?

A. That is correct.

[fol. 330] Q. Now, of those 14 or 15 tickets in front of you, you testified that you only issued 2 of them and I ask you isn't it correct that you issued 10 of the receipts in connection with those tickets?

A. As violations clerk, my name is on the receipt, yes.

Q. And you issued the receipts after they were changed?

A. Yes, it had to be after they were changed.

Q. So when you issued the receipts, you knew they were changed?

A. Yes.

Q. Now, you said in connection with the Wright ticket that there was no reason for Mr. Murray to ask any question about it, do you recall that?

A. Yes.

Q. Now, the entry in the traffic docket does show, does it not, the date the entry was made?

A. Yes.

Q. What date was that?

A. January the 8th.

Q. And the date of the offense was when?

A. September the 15th, 1959.

Q. And are you telling us now that there is nothing unusual about a ticket being some three or four months old?

A. No, there is nothing unusual about that?

Q. Is there anything in the docket to indicate that there is anything unusual about it?

A. Nothing at all, no.

Q. Is there anything on the ticket to indicate that there is anything unusual about it?

A. No.

Q. Do you have the ticket there?

A. No, I don't think so.

Here it is.

Q. Will you look at the ticket, and tell me whether or not it shows anything unusual about it, as far as dates or time is concerned?

A. I don't think as far as the date is on here, as the date it was issued, and the court appearance date.

Q. There is nothing unusual there about it?

A. No.

Q. No postponements marked either on the ticket or in the docket to indicate why such a great period of time [fol. 331] elapsed in connection with that entry regarding that ticket is there?

A. No.

Q. As a matter of fact, all of the entries surrounding the Wright ticket entry in the traffic docket relate to much closer dates of offenses, don't they, in December?

A. Right up to the top of the page, we have four of them that was issued in September, and entered in December.

Q. That is right, and then one month later we have got one that was—there is a note there, isn't there about those, and what does that note say and what does it mean?

A. They were cases that were closed out, yes.

Q. Yes, it also says the state was notified, doesn't it?

A. They were closed out, yes.

Q. The state was notified, weren't they?

A. Yes, on them they had to be.

Q. And it says that in the docket—

A. They have to be notified on that, yes.

Q. But it doesn't say anything about Wright, does it?

A. His case wasn't closed out.

Q. Does it say anything special about Wright?

A. No it doesn't.

Q. Now, this man you said came down from the Director's office in 1960, his name was what?

A. I think his name was Davis.

Q. You never did find out where this five dollar bill that got attached to the Wright ticket, came from, did you?

A. No, I did not.

Q. That is all.

Redirect examination.

By Mr. Sherman:

Q. Officer Elwell, when Mr. Davis came down or whatever that gentleman's name was, did he look at the tickets similar to tickets that are before you today, where there is markings and crossings out on them?

A. Yes he did.

[fol. 332] Q. Did he see markings and crossings out on these tickets?

A. Yes he did.

Q. Did he say anything to you?

A. No sir.

Q. Or to any of the other officers in this court today as defendants in your presence?

A. No he did not.

Q. Did he make any remarks at all about this ticket or tickets similar to that with crossings or markings on them?

A. No he did not.

Q. Did he question any of them at all?

A. No sir.

Q. Now on these tickets and receipts, each receipt that you issued in this case where you were violations clerk?

A. That is correct.

Q. Now, for the purpose of again informing the jury, would you look and see what was on here, is that correct?

A. Correct.

Q. And whatever is on here you marked a receipt for, is that correct?

A. Yes.

Q. So that if you had marked five dollars for a violation of a city ordinance or a prohibited parking, you made your receipt in accordance with what was on here?

A. That is correct.

Q. You did not change these, did you?

A. No I did not.

Q. You changed just one out of this whole group that has been presented by the Prosecutor today?

A. That is correct.

Q. And your receipts, each and every one of them, was based on what was on here, is that correct?

A. That is correct, sir.

Q. And you were following the orders which you were instructed to as a violations clerk, and wasn't that your duty?

A. It was, sir.

Q. And wasn't it your duty to follow what was on here and marked the receipt in accordance with what was on here?

A. It was.

Q. Did you comply with that duty?

A. I did.

Q. That is all.

[fol. 333] Recross examination.

By Mr. Gerry:

Q. I direct your attention to those tickets which Mr. Sherman has just referred, is there anything there to show that the changes were made on this by either Officer Holroyd or Officer Murray?

A. No, you couldn't identify just who made them, they are just scratch marks.

Q. Well, those parts other than the scratch marks on those tickets, there is no writing on them at all, isn't that correct?

A. That is correct.

Q. Now, going back to the Wright matter, if I may, was it at all uncommon a matter would be postponed, and postponed for several months before it ever came to a conclusion?

A. We had quite a few cases like that where it is postponed.

Q. So that when you read Officer Murray your date on that Wright summons and he issued a receipt of January the 8th, when it was marked into the book, would there be

any reason for him to feel that something was unusual or something was wrong?

A. No, no reason at all.

Q. Now, so far as those other cases are concerned, that you pointed out to Mr. Aiken, of some vintage you said were closed out, were closed out for a particular purpose?

A. Yes, the defendant could not be located, he never came into court and we couldn't locate them.

Q. There was no indication that Mr. Wright, the man on that summons, could not be located, was there?

A. No sir.

Q. So it was handled in an ordinary manner?

A. That is correct.

Q. And under those circumstances that existed in the Wright matter, would you have put closed out as you have with those other ones in which the entries were made?

A. I wouldn't close out Wright's ticket, no.

Q. Now, Officer Elwell, when you said that the arresting [fol. 334] officer had to be contacted to get his consent, did you mean that he had to be contacted to get the consent according to the usual procedure if it were followed by the officer who wanted to make the change?

A. Yes, I guess if he was following a usual procedure.

Q. Was there anything to prevent him from not contacting the arresting officer?

A. There could be a lot of reasons for him not. The man was on vacation, the man working a shift, I might go for a month without seeing Officer Murray, if I am working a night shift and he is working a day shift before our hours come together again. See we work six different shifts all together.

Q. So that the officer had gone to make a change only had to do this if he decided he'd live up to the usual unspoken procedure?

A. That is correct.

Q. You had a special reason or motivation for not doing so, he would do so?

A. That is correct, yes.

Redirect examination.

By Mr. Sherman:

Q. Mr. Elwell, when any of these tickets which have been shown to you by the Prosecutor, was there any checks issued by any one of these offenders prior to the time that they paid these five dollars or so?

A. No, there was not.

Q. In other words, you are familiar with the overt act in the indictment, where a check was issued for fifteen dollars, is that correct?

A. Yes.

Q. Now, in these particular cases, were any monies paid prior to the time that you issued a receipt for five dollars?

A. Only the five dollars.

Q. So that there was no check for fifteen dollars, and no fifteen dollars paid before, and a receipt issued for what was there?

A. No, there was five dollars paid on each one of them.

Q. May I show this to the jury, Your Honor?

[fol. 335] The Court: You may not, it is not in evidence. It is just marked for identification.

Mr. Sherman: That is all.

Recross examination.

By Mr. Aiken:

Q. Mr. Elwell, you testified that you made these entries in the docket, and issued the receipts and changed the tickets that you changed, as I understood your question and answer, in accordance with instructions and at somebody's direction. Will you tell us whose instruction and whose direction you were following?

A. Just that I was violations clerk, and the directions that I had to run the books and do all this work.

Q. Well, did somebody instruct you to make those changes?

A. No, not to my knowledge, I don't remember anybody definitely coming to me on any of them.

Q. That is all.

Redirect examination.

By Mr. Sherman:

Q. It was your duty however, to issue receipts, is that correct?

A. That is correct.

Q. And you issued a receipt in accordance with the ticket, what was on the ticket?

A. Correct.

Q. And therefore, all receipts which you issued, they were in accordance with the tickets, is that right?

A. Yes.

Q. That is all.

Mr. Aiken: In accordance with the changed ticket.

The Witness: With what was on the ticket.

Mr. Sherman: I object to that.

The Court: Overrule the objection. Apparently there is testimony in the case that each of these tickets was changed. If they weren't changed, say so. I think he admitted already that they were changed from speeding to parking.

[fol. 336] Mr. Aiken: I think that's all.

Recross examination.

By Mr. Gerry:

Q. Officer Elwell, I wonder, whether I could trouble you to look at summons number 4516. Can you tell me from looking at that summons what the original charge was.

A. I imagine it would be speeding, it is marked up in the speeding block, but it is all scribbled out, you can't read any numbers or violations number.

Q. May I take a glance at that. That's all, I made a mistake. That's all.

Redirect examination.

By Mr. Sherman:

Q. Officer, will you tell us, looking at those tickets, are any of those tickets, the dates on them prior to January 1 of 1959?

A. They are all in 1959, sir, all of them were issued in '59.

Q. Now, how many of them do you have there from January of '59 to September of '59?

A. Nine.

Q. Did you at any time during January of '59 up until September of '59, have any agreement with these two defendants concerning any of these tickets which you have in your hands concerning any changes to be made or concerning the doing of some unlawful act in respect to those tickets?

A. No sir, I definitely did not.

Q. That's all.

Recross examination.

By Mr. Aiken:

Q. You had an understanding with them that you would honor these changes made and as violations clerk, change them in the book.

A. I would enter them in the book as the ones on the ticket.

Q. That is right, and you knew that Mr. Murray and Mr. Holroyd understood that arrangement, didn't you? [fol. 337] A. I don't know if they understood what my job was as far as entering it in the book.

Q. Well, there wasn't any doubt about that if they changed one of them, they expected you to make the appropriate entry.

A. That would be the only way I could enter it in the book.

Q. And wouldn't you call that an understanding or an agreement?

A. No, I wouldn't call it an understanding or an agreement, no.

Q. All right.

Redirect examination.

By Mr. Sherman:

Q. You did not, did you, from January of '59 to September of '59, conspire with these two defendants to obstruct the justice of this state, by making these changes in these tickets.

A. I did not, no sir.

Q. That is all.

The Court: You may step down.

(Witness excused.)

MARIAN LOUISE ELWELL, having been duly sworn, testifies as follows:

Direct examination.

By Mr. Sherman:

Q. Mrs. Elwell, you are the wife of Eugene Elwell?

A. Yes I am.

Q. Where do you live, Mrs. Elwell?

A. 207 Gloucester Pike, Barrington, New Jersey.

Q. And you and your husband have lived there for how long?

A. It will be twelve years this month.

Q. Now, the last nine or ten years, to the best of your knowledge, has your husband been a police officer in the Borough of Barrington?

A. Yes he has, eleven years.

[fol. 338] Q. I direct your attention specifically to the year of 1959, can you recall whether or not your husband was also acting as a violations clerk at that time in the Borough of Barrington?

A. Yes he was.

Q. Now, did he at any time during that year, bring home books from the Borough Hall and in reference to his job as a violations clerk?

A. Yes he did.

Q. And did you have occasion to help him with those books?

A. Yes I did.

Q. And how often would you say during that year that you helped him with those books?

A. Well, when he wasn't on night work, which was frequently, I helped him two, three times a week.

Q. Would you tell this jury just what you helped him, what did that consist of?

A. Well, he'd give me the tickets and I'd call them off, the names on the front, and he'd put them into the book.

Q. The only year you know of is in 1959, is that correct?

A. Yes.

Q. That is all.

Mr. Gerry: No questions.

Mr. Aiken: No questions.

The Court: You may step down, thank you.

(Witness excused.)

Mr. Sherman: Your Honor, there are character witness I would like to have permission to put on after the other two defendants take the stand so we can save some time.

The Court: All right, you may have such permission. Are there any other witnesses that you want to put on personally at this time?

Mr. Sherman: We have no other witnesses except for character witnesses.

The Court: Well, it is to be understood that they will come in at a later time of the proceeding. I believe then, Mr. Gerry, it is now your move.

[fol. 339] Mr. Gerry: I would like to call Officer Murray to the stand.

DONALD F. MURRAY, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Gerry:

Q. Officer Murray, you are presently employed as an officer in the Barrington Police Department?

A. That is correct.

Q. And where do you live, Officer Murray?

A. 522 Charles Avenue, Barrington, New Jersey.

Q. Are you married?

A. Yes.

Q. How long have you been married?

A. Since 1954.

Q. Do you have any family?

A. Yes, three children.

Q. How long have you been an officer in the Barrington Police Force?

A. Since May of 1957, it will be six years. Well it was just six years.

Q. And what is your present rank?

A. Patrolman.

Q. Have you had occasion at any time to serve as a Deputy Violations Clerk with the violations bureau of the Borough of Barrington?

A. Yes.

Q. And on what year did you so serve?

A. Well, I served as Deputy Violations Clerk in every year but 1960, and that year I was violations clerk.

Q. How about the following year, did you continue as a Deputy Violations Clerk?

A. Yes.

Q. What was the practice over this period of time so far as Deputy Violations Clerk was concerned, who was Deputy Violations Clerk?

A. All the police officers in the department, other than the one who was appointed as violations clerk.

Q. And in that capacity, was the Deputy Violations Clerk authorized to do by a customary procedure?

[fol. 340] A. To accept fines from people, defendants, on summonses and write out receipts.

Q. Was there any particular reason why there were Deputy Violations Clerk while you had a violations clerk?

A. Well, yes, Deputy Violations, we all served as Deputy Violations Clerks to allow for motorists who were arrested at night, late in the morning, who wished to pay their fine at the particular time, it didn't necessitate us getting the violations clerk out of bed if he should be in bed at that hour.

Q. Now, when these fines were paid over the desk to a Deputy Violations Clerk, what else would the clerk do, other than separate the hard back copy or waiver of plea?

A. He would take the money on it, and issue the receipt to the people.

Q. And thereafter what would he do with the money or cash or check or summons that was involved?

A. He would put a paper clip on them, put them in the filing cabinet where the violations were kept in the drawer.

Q. And was the violations cabinet right in the police headquarters building?

A. Yes it was, right in the station.

Q. Was it accessible to other members of the police department other than the violations clerk?

A. Yes sir, at all times.

Q. What types of matters could a Deputy Violations Clerk or the violations clerk accept fines on?

A. Well, he could accept them on minor violations such as speeding, red light, careless driving, inspection sticker, he wouldn't be permitted to accept them on drunken driv-

ing, reckless driving, leaving the scene of an accident, things of that nature.

Q. Now, you mentioned speeding, was that through the authorization of the magistrate of the court at that time, to accept fines for speeding?

A. I beg your pardon?

Q. Would the acceptance of fines over the desk for speed-
[fol. 341] ing consistent with the court's authority, the magistrate?

A. Yes sir.

Q. That sometimes has been changed, has it not, Officer Murray?

A. That is correct.

Q. Now, Officer Murray, you have mentioned that during the year 1960, you served as a violations clerk of the Borough there in Barrington, is that correct?

A. That is correct, sir.

Q. And did you just serve for one year?

A. Yes sir.

Q. Now, in addition to serving as violations clerk in Barrington for the year 1960, did you have any other duties to perform?

A. My regular duties as a police officer in the Borough.

Q. Were you in any way privileged or relieved from any part of your duties as a police officer that you performed prior to becoming the violations clerk?

A. No I was not.

Q. How often did you have an opportunity to work on the books of the violations bureau?

A. Well, I would work on them whenever it necessitated, which maybe would arise once or twice a month, it could arise every week, depending upon the load.

Q. Directing your attention to the year 1959, could you from your experience characterize the degree of business or the degree of summonses that passed through the violations bureau?

A. Yes, I would say that 1959 was exceptionally heavy.

Q. Did this heavy period extend into the early part of 1960?

A. Yes it did, 1960, the early part.

Q. As you recall, was there any particular feature in the operation of the Barrington Police Department that gave rise to the increase, if you know, of traffic tickets that were handled?

A. Yes, we had acquired radar at that time.

Q. And is radar usually productive of more violations?

A. Yes, by far.

[fol. 342] Q. Now, how long did that radar machine remain in operation after you first acquired it in 1959?

A. I can't specifically say, I can't give you a date, it remained in operation up until the early part of 1960 when it was broken.

Q. Now officer, I would like to ask you whether or not in your capacity as a violations clerk during the year 1960 or at any time theretofor, if you've ever had an opportunity to observe a traffic ticket which appeared to have been changed on its face?

A. Yes I have.

Q. Now, on such tickets, what was the nature of the alteration generally made?

A. It would be crossed out, simply scribbled out on the face of the summons, and a check or something of that nature inserted in the parking area.

Q. Were these changes obvious only to a violations clerk or to a police officer, or could anybody look at them and know this type of a change?

A. They would be quite obvious to anyone viewing those summonses.

Q. Were there instances where the crossing out even left some indication of what was underneath?

A. Yes.

Q. Now officer, in your capacity as a violations clerk, were you required to make reports?

A. Yes I was.

Q. And by this report, I mean reports of operation of violations bureau and of the traffic offenses that came into the bureau during a given period of time, and the disposition of such traffic offenses?

A. Yes.

Q. Now, can you tell me to whom, if anyone, these reports were made and for what periods of time?

A. Well, I made a monthly report to the mayor and council of the Borough, I also made a monthly report to the County Treasurer's office and to the State, to the director of the administrator of the courts, and also a quarterly report to the state.

Q. Now, to your knowledge while you served as a violations clerk of 1960, was there any failure to ever make any of those reports?

A. I'm sorry, I didn't get the last part of that.

[fol. 343] Q. During your term of 1960, as the violations clerk, were those reports that you have described for us, always made or were there any omissions?

A. No sir, they were always made.

Q. Now, in addition to the reports which you have described you made, and were obligated to make, as a violations clerk in 1960, was there any audit ever made of the books, cash books, docket books, receipts and so on, in the financial end on file of the violations bureau?

A. Yes, the auditor would audit and there also was a spot check from the administrative office of the courts.

Q. Were the auditors special auditors in the sense that they were fellow employees or something or the Township or were they independent auditors?

A. They were independent, sir.

Q. How often were these audits made?

A. I think the Borough auditors audited annually, and the spot checks were made periodically two years.

Q. Now, by spot check by whom were the spot checks made and was it made by an individual or by an office?

A. By an office.

Q. By which office?

A. By the administrative office of the courts, the director.

Q. And now, when these spot checks were made, what does the word spot check mean?

A. Well, that would infer that they came down and they went through summonses at random, they didn't take them

all, they just picked out summonses and looked at them to see that they were O.K.

Q. Would the investigator to your knowledge, actually look at the summons and complaint that comprised the packet in the entire particular case that he chose to call for?

A. Yes, he looked at the whole thing.

Q. Would he cross check with the information found in your cash book and your docket book?

A. Yes.

Q. Did he also check the receipts?

A. Yes.

[fol. 344] Q. Now, so far as this type of spot check is concerned, while you were serving as a violations clerk, did you ever know when he was coming down in advance to check your books and look at everything?

A. No, I didn't.

Q. It was an unannounced examination?

A. That is correct.

Q. Was there an examination made by a representative of the administrative director of the courts during the year of your tenure in 1960?

A. Yes there was.

Q. Did you recall approximately when that was made?

A. It was made in the first part of 1960, I believe it was in March.

Q. Do you recall who it was, the name of the party that came down from the office?

A. Yes I do, Mr. Davis.

Q. And when he came down, did you or anyone else assist him in obtaining the records and the information that he requested?

A. Yes, Officer Elwell and I did.

Q. And did you have an opportunity to observe Mr. Davis as he was working over the various summonses and complaints, complaints which he had requested?

A. Yes I did.

Q. Do you have any personal knowledge from your own observations, not what somebody else might have told you,

do you have any personal knowledge that any of the summonses and complaints which were requested by Mr. Davis had any changes on their face?

A. Yes, I do know, I happened to hand him several of them.

Q. Now, did you make any comment to him about those summonses?

A. No, I didn't.

Q. Did he as a representative of the administrative director of the New Jersey courts, have anything to say to you or to Mr. Elwell about such summonses?

A. No, he just examined them and entered them on his work sheet.

[fol. 345] Q. Now, prior to taking over the violations clerk job in 1960, had you any background or any education or experience at all with bookkeeping or accounting, anything of that sort?

A. No, none at all.

Q. Did you receive either at the commencement of your service of 1960 or at any time during your tenure as a violations clerk any instruction, any explanations from the magistrate of Barrington Municipal Court from the administrative director of the courts or from any other source?

A. No, the only instructions I received was from the preceding violations clerk.

Q. And who would that be?

A. Officer Elwell.

Q. Did you ever receive from the local magistrate, from the administrative office, and from any other source, any written material explaining the nature of your obligation and duties?

A. No I did not, not that I know of.

Q. Now, were there present in the police department any source of statutory law, do you know?

A. We had books, law books in our hall there, yes.

Q. What did the law books look like, what color were they?

A. I hate to admit it, but I am color blind.

The Court: So are some of the lawyers and judges that read them, I put myself in that too.

Q. Officer, have you ever apprehended anyone for going through a red light?

A. Yes.

Q. You say that there were some source of what you call law books in the police department?

A. Yes.

Q. Was there any book promulgated by a Supreme Court on the rules of procedure in the various courts of our state?

The Court: You can show him a simple copy if you want.

Mr. Gerry: I wish I had one.

Mr. Aiken: I don't think it's the type they had, Your Honor.

[fol. 346] The Court: They may have something in the nature of pamphlets or something like that, did you get any kind of a white pamphlet or any other business?

The Witness: Not that I know of.

Q. Now then, despite the color of these law books, as you call them, did you ever have the occasion to examine these law books?

A. Only once in reference to my police duties.

Q. How about with reference to the duties, obligations, and limitations on your authority as a violations clerk?

A. No sir.

Q. Are you trained in the law in any way, you are not a lawyer, are you Officer?

A. No sir.

Q. Did you ever go to law school or have any courses in law?

A. No sir.

Q. Did you ever have an opportunity to go through the book on rules of procedure promulgated by the Supreme Court?

A. No sir.

Q. You say that you did receive some assistance and help by Officer Elwell who was the outgoing violations clerk when you first took over, is that correct?

A. That is correct.

Q. Do you know whether or not this was customary procedure, had it been done before or not?

A. It was my understanding it was done with every violations clerk whoever took office.

Q. Now, can you tell us the assistance which Officer Elwell gave to you when you first took over your job as violations clerk?

A. I am sorry, I don't understand that.

Q. When you first took over your job, after the beginning of 1960 as violations clerk, what type of help did Officer Elwell give you?

A. Well, he assisted me in showing me how to enter things into the book, and everything went with the job, as far as the blue cards that had to go to Trenton.

[fol. 347] Q. You did initially the blue cards that had to go to Trenton?

A. Yes.

Q. Now, in January of 1960, which I think would be approximately six or seven days after you first took office, did you have an opportunity then or about then to go into the violations drawer and make one of the periodic postings?

A. Yes, we worked on the books at that time.

Q. And can you tell me the mechanics or procedures by which who did what and how did he help you?

A. Officer Elwell showed me what first had to be done, how to enter into the docket book, how to enter into the cash book, and receipts to be written on the blue cards and so forth, and then Officer Elwell took the pack of tickets, the money and checks, and read the name of the party, I would sit and merely write the receipt, the amount of the fine, and what the offense was, pass a receipt to him, and then I would write while he read the name again, and so on and so forth.

Q. Did you make all of the entries in the book?

A. The cash book docket and what have you, yes.

Q. And did he do all the reading of the actual summonses and complaints?

A. Yes.

Q. You mentioned that when you wrote out a receipt for a particular matter, that had been read to you, you would hand that receipt to Officer Elwell?

A. Yes.

Q. And that would be attached to that particular summons or complaint?

A. Yes.

Q. Now, as you went through this procedure, what happened when you got down to the bottom of the pile?

A. When everything was disposed of, and we had all the entries made, the receipts had been written out on all the summonses, rubber bands were put around them and they were put in another drawer which was strictly for storage purposes.

Q. And at this point you had made in reference to all and to each of those summonses, all the necessary entries into [fol. 348] the books as dictated to you by Officer Elwell?

A. Yes.

Q. Now, approximately how long a period of time was he good enough to help you out in learning your job?

A. Well, he helped me through January, and partially into February.

Q. Now, during this period of time, did you actually have opportunity to see the summonses from which the information was being read?

A. No sir, I don't see the summonses.

Q. And now, after these summonses or whatever you have to do with them, when an elastic band is put in, are they put into a dead drawer, so to speak?

A. Yes they are.

The Court: Gentlemen, it is now four o'clock. Ladies and gentlemen of the jury, we will adjourn for today. You

will return tomorrow at quarter of ten, room 326. Spectators remain seated until the jury leaves. You may leave.

(Whereupon court is adjourned for the day.)

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Camden, New Jersey

[fol. 349]

Appearances as before.

The Court: Ladies and gentlemen of the jury, I owe you an explanation. You see, unfortunately, when judges especially in the criminal division are trying to handle three or four things at the same time, and this morning I ran into one of those situations and it was in the nature of an emergency matter which required me to go into conference with the boss of all those judges, namely Judge Schalick, the chief assignment judge, and of course he is the boss so I cannot refuse to have a conference if he kind of requested. That is being tactful, and diplomatic at least, and practical to save a job. So that we're a little late getting started even though again for inconveniencing you, my most sincere and humble apologies. All right, Mr. Murray, you have already been sworn. You do not have to be sworn again. Resume the stand.

Donald F. Murray, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Gerry:

Q. Officer Murray, yesterday I addressed a few questions to you in relation to your duties as a patrolman on the Barrington police force, apart from your services as violations clerk during the year 1960. I think I asked you whether or not you were relieved of any regular duties that you otherwise would've had by reason of the fact that you were violations clerk.

A. Yes, you asked me that question, and I said that I had not been relieved of any duties.

[fol. 350] Q. Now officer, directing your attention again to the duties simply as a patrolman and a member of the police department, what kind of hours did you work, did you work shift or the day hours, or how does it work?

A. Yes sir, we worked shift work. We have six different shifts that we work.

Q. And the six different shifts would cover what period of time?

A. Well, it would run into approximately six or seven weeks.

Q. Was there any more than one officer who comprised a given shift?

A. Yes, normally we have, well it balances out that we normally try to have two men in the car at one time.

Q. Now, during the course of your work as a patrolman on the Barrington police force, did you work on shifts with either Lieutenant Holroyd or Officer Elwell more than any other members of the police department?

A. No sir, the schedule was so arranged that you would work the same amount of time with each man, normally.

Q. Schedule is set up that way?

A. Yes.

Q. Now officer, directing your attention again to the experience which you had as a violations clerk in Barrington during 1960, I would like to ask you if an arresting officer on a given traffic violation which was subsequently changed, some change made in the initial charge that was brought on the ticket, if the arresting officer did not make that change, does it follow that the violations clerk would have made that change?

A. No sir, it does not follow. Any member of the police department could make that change.

Q. Going back for a moment to the specific ticket that is referred to in the overt acts, in the indictment, the one which was issued to Robert Wright, you were in court, were you not when Mr. Wright testified?

A. Yes I was.

Q. Had you ever at any time in your life ever seen Mr. Wright before?

A. No, the first time I saw Mr. Wright was when he [fol. 351] appeared here to testify.

Q. If you know him directly or indirectly in any way, would you so state?

A. No sir, I never met Mr. Wright, I didn't know him at all.

Q. Now, prior to the time when Mr. Wright's check was introduced into evidence a few days ago, had you ever seen that check before?

A. Yes sir, I had seen it at the Prosecutor's office when they took a deposition from me, that was the first time I had ever seen the check.

Q. And that would be the statement taken by Mr. Kaplan?

A. That is correct.

Q. And they were taken when?

A. I believe it was December of 1962.

Q. That was the first time that you saw the check of Mr. Robert Wright?

A. Yes sir, that was the first time.

Q. Did you apart from seeing it, know the existence of that check prior to your examination by Mr. Kaplan in December of 1962?

A. No I did not know that a check had been issued by Mr. Wright.

Q. Did you have in December of '62, an opportunity to examine the check of Mr. Robert Wright?

A. Yes I did.

Q. Did you have an opportunity to examine any endorsement that may have been made on the reverse side of that check?

A. Yes I did.

Q. And are you able to tell us whether or not the endorsement on that check, anything else written on that check, is in your handwriting?

A. No sir, there was no writing on there that was mine.

Q. Did you prior to December of 1962 when you were questioned by Mr. Kaplan, have any knowledge of the fact that the Wright summons had been misplaced or lost in any manner?

A. No I did not.

Q. At the time that the Wright matter was disposed of, in January of 1960, in the books of the violations bureau, [fol. 352] did you have for any reason, any particular interest or knowledge of the Wright matter?

A. No sir, I had no knowledge or particular interest in it.

Q. Officer Murray, this may be repetitious but we have had over-night between the periods of testimony. Were you ever instructed by anyone as to the limits of your authority, to define your authority as a violations clerk?

A. No sir, I have never been instructed.

Q. What was your understanding of the powers of the violations clerk in reference to the handling of traffic offenses when you served in that capacity?

A. That I had the authority to dispose of summonses which came under the violations bureau, and not directly in the court.

Q. And with the matters which would be the subject of these traffic complaints and summonses be confined in some nature, the nature of these things?

A. I am sorry, sir, I don't understand that.

Q. The matters which you conceived to be within the authority of the violations clerk, were they only to traffic offenses?

A. Yes sir, as far as I know that was strictly it.

Q. How about the violations or the charge of drunken driving, did you ever have any of those?

A. Did I ever process any?

Q. Yes.

A. Yes I did, sir.

Q. Were there ever any changes made in anything given with any tickets dealing with drunken driving at any time?

A. Not that I know of, sir.

Q. Now, during the course of 1960, your year as a violations clerk, directing your attention to the amount of time which was spent on the respective jobs that you have as a patrolman and as a violations clerk, can you tell us whether during 1960 you functioned principally as a violations clerk or principally as a regular police officer and member of the Barrington police department?

A. Principally I functioned as a police officer of the Borough.

[fol. 353] Q. And did you during the course of that functioning as a police officer, continue to make arrests and so forth that you were required to do by law?

A. Yes I did.

Q. Now, as violations clerk, Officer Murray, I assume that at some point you became familiar with the uniform traffic ticket, is that correct?

A. That is correct.

Q. What comprises the uniform traffic ticket that you used in the state of New Jersey?

A. The amount of copies, is that what you wish to know?

Q. Well, what is the complete packet?

A. The complete packet would be the original, a copy for the police department, a copy for the officer, which would be a yellow copy, and a hard copy which would go to the motorist.

Q. Now, directing your attention to the yellow copy, incidentally, was the police department copy of any particular color?

A. That was a blueish green color, yes.

Q. Now, with reference to the yellow copy, what was its function?

A. That was strictly a police officer's reference to the case.

Q. Now, what was the normal procedure then an arresting officer would follow with relation to these various copies after he had apprehended someone in Barrington and given them a ticket, what would happen to these various copies?

A. Well, it varied in different cases, and a case where he had issued a summons on the road, I would say a majority of the time he obtained the yellow copy himself, he would take the original and the police copy, staple those together and put them in the violations drawer, and the yellow copy he would usually put in his cubbyhole or mailbox slot, and in matters of radar where they were a great deal of summonses issued, he would merely take all the copies excepting the hard copy which was given to the motorist and staple them together and put them in the violations drawer.

[fol. 354] Q. Now, the violations clerk then would ultimately process this ticket, is that correct?

A. So far as entering the books and so forth, yes that is correct.

Q. Now, what happened to the yellow copy in those instances which you have described in which the yellow copy was simply turned in with the other copies into the violations drawer?

A. Well, sometimes they would be marked and returned to the officer and sometimes it would be just disposed of by the violations clerk.

Q. Would this happen in cases where the matter went to court and there was a hearing?

A. No, not where the matter went to court.

Q. With reference to independent records which a police officer, and arresting officer, may or may not keep as to the tickets which he issued to whom or any other information that he wanted, was this a customary practice?

A. To keep a record of his own, it was not a customary practice.

Q. Now, if the arresting officer in an instant in which he had sent in his yellow copy, or with the police department, and the violations bureau copy, had not been contacted by the party making a change on that particular ticket, would the arresting officer know the disposition of that matter if he did not get back his yellow copy?

A. No sir, there would be no way of the officer knowing.

Q. Now, if he knew of the matter, was particularly interested in it in some way, was there a method by which he could go and find out what disposition had been made of it?

A. If the officer had a particular interest in a certain case, and remembered the name of the party involved, he could always go to the docket book and check that case, but if he had no particular interest, didn't remember the name, if he didn't get his yellow copy back, he had no way of determining what the disposition was.

[fol. 355] Q. When a ticket was ultimately processed by the violations clerk, and by ultimate processing I mean making the entries in your docket book and your cash book and so on, if there were a change on the face of that ticket, would there normally also be some indication that the arresting officer had consented or approved of the change in any way?

A. No, there would be no indication that the arresting officer had approved of any change made.

Q. Now officer, during the course of your job as a violations clerk, did you have an occasion to enter upon the record the information on the ticket which appeared to have had changes and had been marked up in some way?

A. Yes, I had entered those in the docket, the cash book and so forth, it was my obligation as violations clerk to do so.

Q. Now, when you made the entries in the docket book, if such be the case and into the cash book and so on on such a ticket, were you aware or did you believe that you were violating the law or exceeding your authority as violations clerk in doing that?

A. No sir, I was not aware that I was violating any law or exceeding my duties because I felt that this is what is done on the summonses, and I had no interest in the summons other than to enter it into the cash book.

Q. Going back to one more thing, Officer Murray, I have gone over with you the check that was apparently involved in this matter, do you have any recollection of ever seeing

the ticket or any copies of the ticket in the Wright matter at any time?

A. I have no recollection other than when I was showed these summonses and check at the Prosecutor's office.

Q. And that was in December of last year, in '62?

A. That is correct.

Q. Now, normally, according to the pattern of operation or routine that existed in the Barrington police force, was there any understanding about changing a ticket issued [fol. 356] by another police officer?

A. There was no direct understanding or direct agreement to anything. It was a procedure which had been followed probably from years back.

Q. When did you go on the force?

A. In May of 1957, sir.

Q. Do you recall by any chance whether this unspoken code or routine or whatever it was was in existence at the time you first came on the police department?

A. As far as I recall, it was in existence at the time and had been for some time prior to that.

Q. And when you came on, did you go in to seek council with anybody as to how these things were worked?

A. No sir, I just fell into the routine of things as a police officer.

Q. Now, was there any method by which the party changing the ticket of another officer by which he was forced to do this or could be checked up on in any way?

A. No, no officer was compelled to do anything.

Q. Now, Officer Murray, I read to you a portion of the indictment which is the subject of this particular matter. I would like to ask you under oath after you have given serious consideration, whether at any time you unlawfully conspired together with either Officer Holroyd or Officer Elwell to pervert and obstruct the due administration of the motor vehicle traffic laws of this state, unlawfully, knowingly, and corruptly agreeing to dispose of certain traffic cases commonly designated operating offenses, such as speeding, by altering and falsifying the summons and

complaint, made by the arresting officer or officers as the case may be, thereby changing the nature of the offense aforesaid to one commonly designated as a standing offense such as Borough parking in a prohibited area?

A. No sir, I did not enter into agreement to obstruct any justice or anything of that nature.

Q. Do you remember at any time talking with Eugene [fol. 357] Elwell or James Holroyd about what the two or three of you were going to do with any particular ticket, other than the normal procedure for the handling of traffic offenses?

A. No sir, I don't recall ever having a conference or anything of that nature with either one of the co-defendants about any summonses issued or changed.

Q. Are these two other gentlemen, do they occupy in your association or private life any closer relationship than anybody else in the police department in Barrington?

A. No sir, they do not.

Q. Officer Murray, have you ever on any occasion changed a ticket from an original charge or modified or altered it in any way to any other charge?

A. Yes I have.

Q. Now, apart from that or with that consideration, have you ever profited personally, directly or indirectly, one single dime by the changing of any ticket that you may have changed?

A. I have never accepted any money, I never accepted any money or anything of that nature or anything that I did for anyone.

Q. Did you make a statement to the Prosecutor when he was interrogating you back in December of '62?

A. Yes I did.

Q. Have you ever, and this again is apart from the information which you may have been given, at the time of Mr. Kaplan or Mr. Rigg questioning you, apart from the information which they gave you at the time, have you ever received or known of the receipt of more money in a given traffic offense than was given into the books of Barrington?

A. No, I never received more money for any traffic offense than was entered in that book, in that traffic docket.

Cross examination.

By Mr. Aiken:

Q. Mr. Murray, you said that you didn't know you were [fol. 358] perverting the administration of justice, is that right?

A. That is correct, that is what I said.

Q. Now, you knew and you know now that back in 1959 and '60, the minimum fine on a speeding charge was ten dollars and five dollars costs, didn't you?

A. Yes I did.

Q. And you knew then, and you know now that of that fine, that that minimum fine of ten dollars was to go to the county treasurer?

A. Yes I did.

Q. And you knew, did you not that if two people were both charged with the offense of speeding, that they should be treated in the same manner?

A. Basically, yes.

Q. Then you knew it was wrong to treat one in a favored way, didn't you?

A. I would have to say no to that.

Q. Well, it is not right to treat one person one way and another person another way when they are both charged with the same offense, is it?

A. Not necessarily so.

Q. No, it is not right, is it?

A. It is not necessarily right.

Q. And every time you changed a ticket that was what you were doing, wasn't it?

A. In a sense, yes.

Q. And you said that there was no direct understanding between you and the other two defendants here about changing tickets, should I take from that that there was an indirect understanding?

A. It was a mutual understanding.

Q. It was an understanding, wasn't it?

A. Yes.

Q. Sure, and when you changed a ticket from speeding to a parking violation, you knew that the money that should have gone to the country treasurer on the speeding charge was not going to go where it should go.

A. If the money was accepted.

Q. Well, you knew that if the man was guilty of speeding, that ten dollars should go to the county treasurer, right?

A. Yes sir.

[fol. 359] Q. And that where the ticket was changed, the ten dollars did not go to the county treasurer, right?

A. Not if only five dollars was accepted for parking.

Q. That's right, ten dollars should have gone to the county treasurer, shouldn't it?

A. Yes.

Q. Now, when you were questioned by Mr. Kaplan, did you tell him anything about Mr. Elwell reading off this batch of tickets, including the Wright ticket which you put in the books?

A. When I was questioned by Mr. Kaplan, I believe that Mr. Kaplan had asked me if I received any help, and I believe that I told Mr. Kaplan that at the beginning of my term as a violations clerk, I had been assisted by Mr. Elwell.

Q. Didn't you tell Mr. Kaplan that you had no explanation of the matters relating to the Wright ticket?

A. Yes I did, no explanation, and I still have no explanation.

Q. Well, you told us that Mr. Elwell read off these tickets to you, and then you entered them in the book without looking at them or without checking the money or something to that effect, didn't you?

A. Yes.

Q. But you didn't tell Mr. Kaplan that, did you?

A. No I did not tell Mr. Kaplan that.

Q. Now, you were not asked on direct examination, Mr. Murray, anything about the five dollars that you had en-

tered in the books on January the 8th, in connection with the Wright ticket, you received that five dollars, didn't you?

A. In essence, I received it.

Q. What do you mean in essence?

A. I never held the five dollars in my hand, sir.

Q. Didn't you deposit it?

A. I deposited a lot of monies and a lot of checks at the same time.

Q. You made a deposit on January the 26th I believe.

A. I don't know exactly what date it was.

Q. The first deposit in January, is that right?

A. Yes, that is right.

Q. And that deposit included the five dollars in connec-
[fol. 360] tion with the Wright ticket, didn't it?

A. Yes sir.

Q. And where did that five dollars come from, Mr. Murray?

A. I assume it came from Mr. Wright's ticket.

Q. It was attached to Mr. Wright's ticket?

A. I assume that it was.

Q. Now at any time while you were violations clerk of 1960, did any other ticket turn up five dollars short?

A. I don't follow you on the question.

Q. Well as far as you know, did any other tickets that you handled in connection with your duties as violations clerk in 1960, turn up with five dollars less than the receipt showed was paid?

A. To the best of my knowledge, no.

Q. Now, if that five dollars was attached to the Wright ticket, had come from some other ticket, there would've been a shortage in relation to the other ticket, wouldn't there?

A. No sir.

Q. Well, are you saying by that that somebody took in some money they didn't give a receipt for?

A. No sir, I am not saying that.

Q. Well that is the effect of your answer, isn't it?

A. Not that I am aware of it.

Q. Now you said that you were never instructed by anybody in connection with matters relating to the violations clerk except possibly Mr. Elwell. You had available in the police headquarters to you both as policeman and violations clerk, a copy of the rules of court relating to municipal court, didn't you?

A. I really couldn't tell you sir, I never went to any books.

Q. You don't know whether there was a copy of the rules of courts available?

A. I am not familiar with them. I couldn't truthfully say there was or there wasn't. I went to the judge for all my decisions.

Q. And you sat in court twice a month with the judge as violations clerk, didn't you?

A. Yes I did.

[fol. 361] Q. And you don't know whether there was a copy of the rules of court available?

A. That was never a copy of the rules of court at the time we sat on court.

Q. Now, how about in police headquarters?

A. I don't know sir.

The Court: Is this the first time you had been violations clerk?

The Witness: Yes.

Q. Well, you had been Deputy Violations Clerk, hadn't you?

A. Yes I had.

Q. Since you joined the force?

A. Yes sir.

The Court: When did this business of revolving as far as the violations clerk, start?

The Witness: Well, it had been, the girl who works in the tax office, she had the first and then I believe Sergeant Rehmer had it, and then Officer Elwell, myself, and then Officer Graver took on from there.

The Court: In other words, four or five years and each one had a one year term.

The Witness: Well, no, Sergeant Reamer had it for two years.

Q. Now, in connection with your testimony, Mr. Murray, about Mr. Davis, the gentleman from the administrative director's office, did you tell him anything about the fact that you changed tickets?

A. No sir, I did not tell him.

Q. Did you tell him anything about tickets being changed by anybody else?

A. No sir, I did not tell him anything about anyone else.

Q. Did you ever tell the judge that you were changing tickets?

A. I did not.

Q. Outside of the police department, Deputy Violations Clerk, did you ever tell anybody else?

A. Outside of the department, sir?

Q. Yes.

A. Not that I recall anybody specifically.

[fol. 362] Q. You didn't tell any member of the mayor and Borough Council, did you?

A. Not that I know of.

Q. And all of your entries in the cash book on the traffic docket that you made as violations clerk, as far as money is concerned, balanced out?

A. Yes.

Q. Mr. Murray, didn't you tell both Mr. Rigg and Mr. Kaplan that where a ticket was to be changed, the consent of the issuing officer had to be obtained?

A. Yes, I told the gentleman that.

Q. I think that's all.

Cross examination.

By Mr. Sherman:

Q. In your regular duties as a police officer during the years that you have acted as a police officer, did you ever have a course of any kind or instructions to the law as to

when you can or can't make an arrest for different violations of the law?

A. A course pertaining to my making the arrests?

Q. Yes.

A. Yes, I attended a school.

Q. Now, did you ever have a course however, in relations to the violations clerk?

A. No sir, there was nothing available.

Q. And was there anything included in the course which you took in respect to violations clerks?

A. No sir, not in police school.

Q. In other words, the course that you did have was a course for how long a period of time?

A. Six weeks, sir.

Q. And this course was given to officers who choose to take that course or is that mandatory?

A. It is not mandatory, either the officer wants to go or the Borough sends him.

Q. And you, as one of the officers, chose to take that course, is that correct?

A. That is correct, sir.

Q. When did you take that course?

A. Right when I first came on the police department. I was only on a week when I attended the school.

[fol. 363] Q. And outside of taking that course, did you ever receive any instructions from anyone else as to how and when you can make an arrest, and or whether you have to be present or not present at the scene, or anything of that nature?

A. I have been instructed in other, say a week, schools that I have attended.

Q. In any of those course that you took, is it my understanding that you received no instruction whatsoever in respect to the duties of the violations clerk?

A. No sir, only from my predecessor.

Q. Now, the prosecutor asked you if you were familiar with the rules of court. You did not read the rules of court, is that true?

A. No sir, I did not.

Q. Was it your understanding that whatever the violations clerk did or the clerk was under the jurisdiction of the court itself?

A. Yes sir, that was my understanding.

Q. And you received this knowledge and understanding from the court itself?

A. Yes sir, it was my opinion that the judge was my boss.

Q. And you are not familiar with the present rules that have just been made by the court in reference to violations clerks and what they can or can't do as prescribed under the rules of the court?

A. No sir, I have no knowledge of that.

Q. And you don't even know how many pages or how many rules there are in this rule book concerning what a violations clerk can do and can't do.

A. Not the slightest idea, sir.

Q. And you are not familiar with the fact that the rules which state that the court is responsible for all these matters which take place in the court, are you?

A. No sir.

Q. You are not familiar with the fact that there is such a rule, are you?

A. No sir.

Q. And you were never told that by a judge or anyone else, by the magistrate or anyone else?

A. I never what?

[fol. 364] Q. You were never told that?

A. No, I was not.

Q. And when they came from Trenton from the administrative office, did they tell you that the obligation was to the court alone and what the court says is what you should do?

A. They never told me directly anything. In fact, the only man I ever saw from the administrative director's office was Mr. Davis and his primary purpose of being there, and as I understand it, was to check on the records and so forth.

Q. And serving as a violations clerk, your duties as a violations clerk are entirely different, were they not, than your duties as a police officer?

A. Yes they were.

Q. And you are familiar with your duties as a police officer, isn't that correct?

A. I believe I am, yes.

Q. There wasn't any question ever raised against you in respect to your duties as a police officer, when they interrogated you?

A. No sir.

Q. And for the interrogation both by the Attorney General and the Prosecutor's office, it was purely in reference to the violations clerk or Deputy Violations Clerk, isn't that correct?

A. Yes sir, that was the major reference.

Q. Now, when you said it was understood by changing tickets, was it understood by each and every officer or others connected with that court that you had certain discretionary powers in these cases?

A. Myself as a violations clerk?

Q. Yes.

A. I really couldn't answer the question sir, I don't know what each officer was aware of about my powers or anything else.

Q. Well, was it your opinion that you had discretionary powers, the right to make changes when you made those changes?

A. My own power, yes.

Q. And you held that opinion from the time that you came on the force up until the time that this investigation took place?

A. That is correct.

[fol. 365] Q. Had anyone from the Prosecutor's office or from Trenton from the Administrative Office contacted your Borough since this investigation to instruct you as to what the rules are in respect to your duties as a Deputy Violations Clerk?

The Court: Sustain the objection. As far as we are concerned, it is immaterial and irrelevant because all of the rules have now been changed.

Q. Who is the violations clerk at the present time?
A. At the present time it is Alexander Davidson.
Q. And do you know when he was appointed as violations clerk?

Mr. Aiken: I object.
The Court: Sustained. Immaterial and entirely irrelevant.

Q. That is all.

Redirect examination.

By Mr. Gerry

Q. Now, Officer Murray, you were asked about common treatment for same offenses by Mr. Aiken. In your capacity as violations clerk, were you required to be in court to help the judge and so on on court nights?
A. Yes I was.
Q. And were you ever present when persons charged with the same type of offense—

Mr. Aiken: I object. It is leading and entirely irrelevant.
The Court: I will hear you on it, Mr. Gerry.
Mr. Gerry: If Your Honor please, I think the Prosecutor has raised it on cross examination that the basic fault here is to somebody receiving a different penalty for the same offense. I am simply trying to point out—I would make an offer of proof, Your Honor.
[fol. 366] The Court: Why don't we do that at side bar. The jury may remain in the box.

(The following is heard out of the presence of the jury.)

The Court: All right, gentlemen, I will hear you.
Mr. Gerry: If Your Honor please, on cross examination it is my recollection that Mr. Aiken asked the witness, Offi-

cer Murray, whether or not it was proper in his opinion or as he conceived his duties, or conceived the law restricting or defining his duties, to enter a ticket for speeding in what case for the accepted amount of ten dollars and five dollars cost, and in another case for parking where that speeding summons had been altered and the desparity of the amounts which were required of the violator constituted an unfair treatment and something that he should recognize as being unfair and improper. On direct, it was my intention to simply ask Officer Murray that in during the course of his duties as violations clerk, whether or not he was required to be in court on court nights and assist the court and whether or not in his experience depending on mitigating circumstances, different amounts of fines were produced for the same thing.

The Court: What you are doing now is you're bringing the judge into it. The question asked by the Prosecutor was this, do you or do you personally, let's forget all about judges and ones who have been sentenced because all those cases are already in court where as a practical matter, all of these should have been. This is not in front of the jury, so it makes no difference. We all know definitely none of them had any right whatsoever to change the ticket, and that is the law just as clear as the fact that I am looking at you now. Now, when we go into court we have something else. We then have a case, actually being tried, with the judge meting out punishment and only there would be [fol. 367] circumstances where there should be a change of the penalty. I have that every day of the week when I sit in criminal court on sentence day, but that is not what the Prosecutor says. What the Prosecutor is saying in effect, as I understand the question and if I am wrong, please correct me, did you personally feel that two people charged with the same offense, to wit, speeding, shouldn't get the exact same treatment. And the answer was well basically, maybe, but then I think the Prosecutor continued on one step further and said do you feel they both as far as you

personally are concerned, that you're treating one unfairly in relation to the treatment that you gave the other. Now, I don't see how bringing the judge into it, because once it gets in front of the jury, there is testimony in the case, there is mitigating circumstances that may be introduced. We said did you personally feel that that was the right thing to do. So for that reason I think that what happened in court is not connected with and I therefore overrule it and still rule that it is immaterial and irrelevant. Objection however, to the court's ruling may be entered upon the record on behalf of the defendant.

Mr. Gerry: Your Honor, it is my feeling for the purposes of the record, that what was basically involved during the course of this was the element of criminal intent, the knowledge on the part of the defendant, and that if this man who had not had any prior training, has been exposed to experiences in court, where varying fines were inflicted, or imposed, upon people under the same charge. That would be quite understanding that he might misinterpret it.

The Court: No, I think that is going too far. Let's get one question straight now. As I understand it, Prosecutor, is your question directed the same as I have said it, did you personally feel, was that your question?

Mr. Aiken: Well, I don't think it was quite that way, Your Honor.

[fol. 368] The Court: Well, what way is it then?

Mr. Aiken: Well, I asked him if he didn't know it was wrong to treat two people accused of the same offense in different manners?

The Court: Now, what the hell is the difference between that and what I said. Now we've got to get this straight.

Mr. Aiken: It's just a matter of using language, that is all.

The Court: Aren't you asking him do you personally feel, in other words, does he have a right to in effect disturb the function of the court. Now, obviously what he did was wrong, there is no doubt about that, it is not a judgment and in no way affects your case because the jury de-

cides it, not me, so don't worry, I know what the law is on it, and you definitely had no right to do what you did, and it is definitely a violation, but there the people out there that are going to decide this conspiracy. Now, under the circumstances you see, the question, he in effect is saying although he didn't put it this bluntly, but I will, did you feel that you had the right to usurp the powers of the court. And that in effect is what he is saying. You see, when you go into court regardless of what you may be charged with, testimony is presented, you could be found guilty, say for example drunken driving. How many times have we had a drunken driving charge made against somebody, they go into court and then the proof falls apart, the doctor doesn't remember or there is some doubt in his mind if he had known that fellow had been drinking, or something else, which was to soothe his nerves or something, and non-alcoholic, which affected him in the same way. Now, you may finish up with the conviction careless driving. We have that every day of the week on an entirely different charge. Well, as I understand the question of the Prosecutor, you feel in effect that you had the right to go ahead and change [fol. 369] these things on your own, and obviously I don't think that comparing it to an actual judicial procedure, I think that is going too far. It will remain the same. Objection sustained. All objections may be entered upon the record on behalf of the defendant.

(The following takes place in the presence of the jury.)

By Mr. Gerry:

Q. Officer Murray, I think that there is in evidence now the fact that you signed a receipt in the Wright matter for five dollars on January the 8th, 1960.

A. That is correct.

Q. Can you tell us how long that was after you first assumed your duties as the new violations clerk of the Borough of Barrington?

A. It would be approximately seven or eight days.

Q. Now, when Mr. Davis came down from the office of the Administrative Director of the courts in 1960, did he make any comment to you at any time about the proprieties of the tickets that he saw?

A. No, he made no comment at all.

Q. I think that you testified that you gave a statement to Mr. Kaplan in December of 1962, is that correct?

A. That is correct.

Q. I believe that Mr. Aiken has asked you whether or not you indicated to Mr. Kaplan in December of 1962 the manner or method in which you received help from Officer Elwell and did Mr. Kaplan ask you the nature of the help that you received.

A. No sir, not that I recall.

Q. Do you recall being asked on page 57, do you recall being asked by Mr. Kaplan, "And were you the only one who made up the deposit slips during the time you were violations clerk.", and giving the answer "I can't give you [fol. 370] a yes or no answer on that. At the beginning when I took over, I had help," and thereafter being asked "You had help," and answering to that question "Yes, because I wasn't familiar with the book work involved." Do you remember those questions and giving those answers?

A. Yes I do.

Q. Now, in your capacity as a violations clerk, you were making your periodic posting of the various summonses and complaints when you reached a ticket which had some alteration or change on its face, which you had nothing to do with, did you as violations clerk conceive it to be your duty to enter what the fine was that was shown on there, the final fine?

A. Yes, that was my idea of it. That was my obligation to do so.

Q. Did you conceive it your duty to police the rest of the police force in the department and any other people appearing on that summons?

A. No sir, I didn't feel it was my duty at all.

Q. That's all, thank you.

Recross examination.

By Mr. Sherman:

Q. Officer Murray, various tickets were issued in 1959. I believe the testimony was somewhere around 900 tickets, do you recall that?

A. I know there were a great deal of tickets, I don't recall that specific figure.

Q. When we speak of these tickets being issued, they were issued by all the officers in the Borough of Barrington, not just the three gentlemen here today, isn't that correct?

A. That is correct, sir.

Q. And when you were acting as violations clerk and you would give a receipt, you would issue a receipt in accordance with the manner in which the complaint or whatever the fine was, isn't that correct?

A. That is correct.

Q. And that could've been made by other people besides [fol. 371] the three that are here today, isn't that correct?

A. Very correct, sir.

Q. That's all.

Recross examination.

By Mr. Aiken:

Q. Mr. Murray, I forgot to ask you about these tickets that were marked for identification yesterday. Would you look at these and tell us how many you issued?

A. Yes sir, I issued eight of them.

Q. And those eight all show evidence of having been changed, do they not?

A. Yes, I believe that is right.

Q. Can you tell from looking at those eight whether you made the changes or whether somebody else made them?

A. Yes, I can tell, I didn't make any of those changes.

Q. Did you consent to those changes?

A. Indirectly I guess I did.

Q. The understanding was that the change had to be with the issuing officer's consent, wasn't it?

A. That was the mutual understanding, I would say.

Q. Will you look at these tickets there and tell me how many of the receipts you issued?

A. Two.

Q. Two receipts?

A. Yes.

Q. Now, on those two where you issued a receipt, if you had looked at the hard copy, the offender's copy of the summons, can you tell that a change had been made on that copy?

A. From the hard copy could I tell?

Q. Just on ones where you issued the receipt.

A. Yes sir, I could.

Q. So that when you accepted money that was paid, either the change had not yet been made or it was evident on the hard copy of the ticket, isn't that right?

A. When the money was paid?

Q. Yes.

A. When the money was paid, it was evident on the hard copy from what I—

[fol. 372] Q. Or the change had not yet been made, isn't that right?

A. It would be evident, yes.

Q. Now, you issued speeding tickets that fell within the minimum fine that were not changed, didn't you?

A. I had issued some that had not been changed, yes.

Q. Where the fine would've been the minimum of ten dollars and five dollars?

A. Yes.

Q. That's all.

Redirect examination.

By Mr. Gerry:

Q. Officer Murray, how many summonses or tickets do you have there that the Prosecutor has handed to you?

A. How many in here all, sir, I have 14 in front of me.

Q. And of those 14 tickets which the Prosecutor has handed you, did you make changes on any of those?

A. No sir.

Q. Can you tell us of the 14 tickets in what year the monies were paid?

A. Yes, 12 were paid in 1959 and 2 were paid in 1960.

Q. It was in 1960 that you were violations clerk, is that correct?

A. Yes.

Q. Is there any evidence in relation to any one or more of those 14 tickets that any monies were received over and above that for which receipts were written out?

A. No sir, there is no evidence of that.

Q. That's all.

Recross examination.

By Mr. Sherman:

Q. Officer Murray, when you became the violations clerk, you received some information, somehow, some way that as a violations clerk, you had the authority of certain traffic offenses, is that correct?

A. That is correct.

Q. And you also knew that you had no authority over certain other traffic offenses, isn't that correct?

[fol. 373] A. That is also correct.

Q. And you knew that you had no authority over offenses such as operation of a motor vehicle while under the influence of intoxicating liquors, isn't that correct?

A. That is correct.

Q. And you knew that you had no jurisdiction over reckless driving or careless driving, isn't that right?

A. Over reckless driving, but not careless driving.

Q. And you knew that you had no authority over leaving the scene of an accident?

A. That is correct.

Q. And you had no authority to driving while under the revoked list?

A. That is also correct.

Q. And you had no authority of driving without a license?

Mr. Aiken: I'm going to object to the term of authority by Mr. Sherman.

Mr. Sherman: I am reading from the rules, Your Honor, may I read this rule. Supreme Court designated offenses schedule fines, it says that the court shall by order, this is the Supreme Court which may from time to time be amended, supplemented, repealed, designating the traffic offenses within the authority of the violations clerk, provided that such offenses shall not in no to the ones I just read.

The Court: What is the purpose of going all through this. What rules are these. Are these the amended rules or are they the original?

Mr. Sherman: This does really not amend itself, it is the same rule while he was violations clerk, and has one or two little amendments.

The Court: What are you trying to prove. He has already said that as far as he was concerned, he never looked at the rules. He never saw the rules, he never read the rules. If he never saw them or read them, how can you now confront him with the rules. What relevancy does that [fol. 374] have. Isn't that what you have in mind, my friend?

Mr. Sherman: May I show this to Your Honor?

The Court: All right, show me the relevancy as far as the rules are concerned. Now you are going to give him the first course on the rules, it is entirely irrelevant. If you want to say what is your understanding, for example that for drunken driving, you have to go, and what did you do, this that or the other thing, I will permit that, but I am not going to have a recitation of the rules of the Supreme Court in this court today because he said he never looked at them, never read them, or anything else.

By Mr. Sherman:

Q. Forgetting the rules I have just read, officer, what was your understanding as to what offenses you had authority to act and what offenses you had no authority to act?

The Court: Do you mean on changing the tickets?

Mr. Sherman: No.

The Court: Well then, you'd better get that straight.

Mr. Aiken: That is my objection, Your Honor, the authority.

The Court: All right, withdraw that and start all over.

Q. You knew that certain offenses you could collect money, is that correct?

A. Yes sir, that is correct.

Q. You knew that certain offenses, there is no court hearing required, is that correct?

A. Yes sir.

Q. You knew that the person could sign their name in the back of that summons or complaint, waiving a hearing is that correct?

A. Yes that is correct.

Q. Did you also know that there were certain offenses [fol. 375] that you could not waive a hearing?

A. Yes sir, that is correct.

Q. And what were those offenses?

A. Offenses such as drunken driving, or driving under the influence, leaving the scene of an accident, reckless driving—

Q. And in those offenses you had no jurisdiction of your own to collect any fines, unless imposed by the court, isn't that correct?

A. Yes sir, that is correct.

Q. So that any changes that were ever made, were made only on those offenses about which you felt that you had by reason of your own predecessor or other information that you had, that you had a right to do those things, which you did.

Mr. Aiken: I object to that question, Your Honor.

The Court: No, if that was his personal feeling, I will permit it.

The Witness: Yes sir, that is correct.

The Court: Now, from the standpoint of intent, that is the only purpose, and the court will charge on intent.

Mr. Sherman: That's all.

Recross examination.

By Mr. Aiken:

Q. In conection with these series of questions that Mr. Sherman just asked you, nobody ever told you or you never read anywhere, did you, that you had the authority to change a ticket?

A. No sir.

Q. And you knew that you had no discretion to make a determination as to a guilt or innocence on a valid ticket, didn't you?

A. Not necessarily, no sir.

Q. Now the rule, you know the rule, don't you, that Mr. Sherman was referring to only related to your power as a violations clerk to collect fines, didn't you?

A. The particular rule, I guess that he was referring to was correct.

[fol. 376] Q. And there was a schedule of fines prepared by the court, was there not?

A. Yes sir.

Q. And your only authority as violations clerk was in connection with the matter if a person wanted to plead guilty to a certain charge, and that was within that schedule of fines, you told him what the fine was and accepted it, is that right?

A. That is right, yes.

Q. That is all.

Redirect examination.

By Mr. Gerry:

Q. Officer Murray, so far as determining the guilt or innocence on any matters that came under the province of the violations bureau, right on the form of the uniform standard ticket, there is a provision, isn't there, the person can come in and plead guilty and you can take the fine in certain circumstances?

A. Yes sir, on the back of the hard copy.

Q. And when you or anyone else received money over the desk from a violator, did he sign that waiver?

A. Yes sir, I would say the majority of the time that the people signed it.

Q. So in those instances, you would not be determining whether or not he was guilty or innocent, would you?

A. No sir.

Q. That's all.

Recross examination.

By Mr. Sherman:

Q. One other question, Officer, did you ever sit as a violations clerk when the judge was hearing cases and the judge would make an amendment and ask you to make a correction on the summons and complaint as the clerk?

Mr. Aiken: I object.

The Court: I will permit that.

[fol. 377] The Witness: Could we have that again, I don't understand that.

The Court: Supposing you reframe your question so that he can understand it.

Q. During those nights that the court would sit, and you would act as a clerk in the violations bureau, were there any times that the judge made a ruling on a certain case and asked you as the clerk to make the correction on the summons and complaint in view of his ruling?

The Court: What do you mean by that. Supposing I do this for an illustration. Let us assume, for example, there is a charge of reckless driving, that when the matter is presented in court, and the witness is produced, the judge comes to the conclusion that it is not or does not fall within the provision of the law of reckless driving, but he does find him guilty of careless driving. Now that sometimes happens. Now, when you say make an amendment, is that in the nature of a conclusion by the judge as to his guilt or innocence and his specific notation to enter upon the record the finding of the court of careless driving, is that correct, because I don't think there is amendments by these magistrates before the cases are heard, is there?

Mr. Sherman: What I meant, Your Honor, was citing the same set of facts as Your Honor just cited, under the reckless driving, the certain part of the statute 39:4 whatever it is, now if it was amended by the court, the statute would change.

The Court: You mean after a hearing?

Mr. Sherman: Yes.

The Court: All right, I will go for that. That amounts to the same thing. In other words, the conclusion of the court is he finds him guilty of careless driving or whatever it is.

[fol. 378] Mr. Sherman: And to change the summons and ticket in conformity with what the judge has said.

The Court: You don't change it. You put down whatever the conclusion is or the judgment of the court is. That is adding to, and not necessarily changing.

Mr. Sherman: Or striking out.

The Court: Well, I suppose you can strike out too. All right now, do you understand that. Have you ever been present when that has happened?

The Witness: Yes.

The Court: Obviously yes. All right, anything further?

Redirect examination.

By Mr. Gerry:

Q. Officer Murray, on the back of the uniform standard traffic ticket, there is listed the type of offense that you mentioned that could not be handled by the violations clerk, is that correct?

The Court: You can look at them if you want.

A. I am aware of it, Your Honor, I am aware that that is on the back of the hard copy.

Q. Have you as a violations clerk or otherwise ever disposed of any of those charges of that nature?

A. No sir.

Q. That's all.

Recross examination.

By Mr. Aiken:

Q. The judge in the municipal court in Barrington at no time ever told you that you had any authority to change a ticket, did he?

A. No sir.

Q. And you knew, didn't you, that you had no authority to make a determination as to guilt or innocence in the particular charge, didn't you?

[fol. 379] Mr. Gerry: I object.

The Court: All right, we're going a little but further. I think the answer on this thing is, and so that we get this thing straightened out, his testimony is when a ticket came in and the man had signed it and so on and so forth, the man in effect, by signing the ticket, sending in the check, paying the check over the counter, and in effect said I am guilty of this offense charged and here is the money, I don't want to come back here. Now, that he said, that he knows, he doesn't ask whether the fellow was guilty or not

guilty, he concluded that the actions on the part of the man, even though he didn't sign the ticket, he mailed it in, that it was in effect at least by action, if not anything else, and admission that he was guilty of the charge against him set forth under the summons. Now pick it up there if you want to. When we start messing around with something else, I don't think we should.

Mr. Aiken: I have no further questions.

The Court: All right, you now stand excused. You may step down.

(Witness excused.)

The Court: It is now three minutes of one, and we are all going to get excused now and go to lunch. Spectators remain seated until the jury leaves. You may leave. Please return to room 326 at two o'clock.

(Noon recess.)

The Court: Now, I believe we had finished with Mr. Murray, is that correct?

Mr. Gerry: Yes. I would now like to call Officer Holroyd.

JAMES H. HOLROYD, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Gerry:

[fol. 380] Q. Officer Holroyd, are you presently a member of the Barrington Police Department?

A. Yes I am.

Q. How long have you been with the police department in Barrington?

A. Twelve years.

Q. Where do you reside?

A. 428 Austin Avenue, Barrington, New Jersey.

Q. Do you have a family?

A. Yes I do.

Q. What is your family consist of?

A. My wife and four children.

Q. What rank do you hold in the Barrington police force?

A. Lieutenant of Police.

Q. How long have you held that position?

A. Since 1959.

Q. Have you ever at any time served as violations clerk in the violations bureau of the Barrington Municipal Court?

A. No sir.

Q. Haye you ever had the responsibility or participated in the entries of the disposition of traffic offenses in the docket book, cash book, and so on, the other books incidental to the Borough of Barrington?

A. No I did not.

Q. Were you questioned, Lieutenant Holroyd, by Mr. Kaplan of the Prosecutor's office at some earlier time?

A. Yes I was.

Q. At that time, were you given an opportunity to see a certain check that was issued by Robert Wright incidental to a traffic offense in the Borough of Barrington?

A. Yes I was.

Q. Did you observe the endorsements and so on on the reverse side of that check?

A. Yes I did.

Q. Would you recognize that as your signature on any part of it?

A. It was not my signature.

Q. Were you also at that time shown a uniform traffic ticket which had been issued to Mr. Wright?

A. Yes I was.

Q. And did you have an opportunity to observe the bottom of that ticket, the signature of the officer, the arresting officer?

A. Yes I did.

[fol. 381] Q. And who was that officer?

A. The ticket was issued by myself.

Q. And your signature, it was your signature appearing on the bottom thereof?

A. Yes it was.

Q. No question about that?

A. No sir.

Q. Did you have any knowledge of the disposition other than the testimony which may have been given in this case?

A. No I did not.

Q. Did you participate in any way in any change on the face of that ticket?

A. No, I did not.

Q. Were you in court when Mr. Wright testified in this case?

A. Yes I was.

Q. You saw Mr. Wright at that time?

A. Yes I did.

Q. Did you recognize him?

A. I did not.

Q. Have you ever seen Mr. Wright since the date under which you issued the ticket in question to him?

A. Not until the day he was in court here, Monday a week ago.

Q. Did anyone, to the best of your recollection, ever approach you concerning the disposition of the ticket which you issued to Mr. Wright?

A. No sir, not to my knowledge.

Q. Do you recall whether that particular summons or ticket was issued to Mr. Wright during the course of your duties on the road or incidental to your duties in the operation of the Barrington Radar machine?

A. The ticket was issued to Mr. Wright on Radar, while I was operating the Radar.

Q. Under the circumstances, do you know what was done with the yellow officer's copy which is a part of the official uniform traffic ticket?

A. Well, on Radar there are four copies to the uniform traffic ticket. There is a white copy, a blue copy, a yellow copy, which I believe belongs to the officer. A hard copy is given to the defendant. On Radar, it was my procedure, the procedure of the rest of the officers, that the white, blue and yellow copies would be stapled together and put [fol. 382] into the violations drawer, and there it remained until it was disposed of in the Violation Bureau or in court.

Q. In relation to that ticket given to Mr. Wright, did you ever accept any money from Mr. Wright, or anyone on his behalf, over the desk or counter, there in the Violations Bureau office?

A. No sir, I did not.

Q. Did you sign the receipt for the moneys received?

A. No sir, I did not.

Q. Prior to your testimony before Mr. Kaplan, in December of 1962, were you aware of the existence of any check which had been issued by one Robert Wright?

A. I was not.

Q. Do you recall, Officer, whether or not you ever received a yellow copy, indicating the disposition of the Wright matter?

A. Not to my knowledge.

Q. Can you tell us what the customary practice was with relation to the return of yellow copies to the arresting officer in these traffic cases?

A. Well, the customary practice was that if the person came into the Violations Bureau and paid the fine, the disposition on the back of the summons, it would be written on the back of the summons and deposited into our mail slot, or as we call it a cubby hole. And from there on, you would know what the disposition of the summons was. Now, there was a lot of times if it would go into court, the yellow copy would be pulled off the ticket and issued to you on court night.

Q. For what purpose?

A. For your recollection of what day the summons was issued, for the amount of speed that the defendant would be tried on in court.

Q. If the Wright matter was not disposed in Court, then that would presumably not be the use of the yellow ticket?

A. No sir.

Q. Now, Officer Holroyd, did you during the year 1959 or any time subsequent thereto, keep a record of tickets which you issued and you knew you issued in it?

A. No sir.

[fol. 383] Q. Did you know or had you ever heard of Robert Wright prior to the issuance of the ticket to him?

A. I didn't get your question sir. Would you repeat it?

Q. Did you know of, directly or indirectly, Mr. Wright prior to the time which you issued him a traffic ticket?

A. No sir, I did not.

Q. Had you ever heard of Mr. Wright?

A. No sir, I did not.

Q. Assuming, if you will, officer, as you testified and did know Mr. Wright or anything about him, and that no one approached you on this Wright matter, and that you had no personal interest in the disposition, apart from the disposition of any traffic ticket which you issued, and that you did not receive back a yellow copy showing the disposition of that matter, would you have had any independant knowledge of the disposition of the Wright matter?

A. I would have no recollection of the Wright matter.

Q. Can you give us an idea, approximately, how many tickets have been issued during the year 1959, in which the Wright ticket was also issued by you?

A. Counsellor, tickets I issued all—was issued in the Borough of Barrington.

Q. Tickets which you issued, approximately, if you have any idea?

A. I would assume approximately 150.

Q. Can you tell us from your experience in the Barrington Police Force, and particularly directing your atten-

tion to the year 1959, in the early part of 1960, what, if any, procedure or custom or routine was followed by an officer who desired to make some change on a ticket which had been issued by another officer?

A. The routine was that the officer who wanted to make the change on the summons would come to the police officer that issued the summons and ask him if he would give the defendant a break, and also informed the officer [fol. 384] who issued the summons the circumstances of the case.

Q. Under the circumstances which I outlined in the previous question, if this routine were not on order by someone on the police department, and the change were made anyway, would you or any other arresting officer have known about it?

A. No sir, you would have no recollection because as the summonses were issued on Radar, there was no record kept of the summonses. The three copies were stapled, put in the violations drawer, and that is where they lay until they were disposed of in the Violations Bureau or in court.

Q. Have you, on any occasion, made any changes of any sort on a traffic ticket?

A. Yes I did.

Q. Now, have you ever, either in relation to particular tickets, which we are principally concerned with Mr. Wright, or any other tickets, have you ever received any money, directly or indirectly, for any benefit or anything in lieu of money, for changing a ticket or for not objecting to changing a ticket issued by you?

A. No sir, I have never received one penny.

Q. Of the yellow copies, which you did retain customarily, would this usually be on Radar, or in instances where you issue tickets to the motorists on the road for radar. Do you understand that question?

A. No sir, I don't.

Q. Of the tickets which you issued, would customarily you have retained the yellow copy of that ticket which you

issued, more when you were on the road and issued the ticket, or more when you were working on radar, or was there no difference.

A. Well, I would approximately say nine times out of ten if it were on the road, a ticket that was issued while I was working with a car, I would retain the yellow copy unless I was in a hurry and I would put just the whole summons right into the drawer.

Q. Do you recall whether or not the volume of traffic [fol. 385] offenses passing through the Violations Bureau in the Borough of Barrington was exceptionally great or just the same or less the preceding years?

A. The year 1959, and the early part of 1960, there was a tremendous volume of tickets that had passed through the Violations Bureau.

Q. Is there any particular reason for that, which you can recall?

A. We had attained a Radar in 1959 and we ran the Radar until it was broke early in 1960.

Q. By the way, while I am thinking of it, may I ask you whether or not you worked shift work in your tour of duty?

A. Yes.

Q. Did you have any more shifts with Officer Murray or Officer Elwell, more than any other members of the Barrington Police Force?

A. Well, I would work with all of the men and I would work the six shifts that the officers would work. I would work with Officer Murray and Officer Elwell.

Q. And do you work with them more than you work with any other members of the Barrington Police Force?

A. No sir, I would say I work with all the men.

Q. Was there any departmental written regulation or order originating in the Magistrate or the Chief of Police or the Director of Public Safety, or any other public official requiring any change in summonses, be checked out with the issuing officer?

A. No there was not.

Q. Did you ever secretly or otherwise agree or conspire with either Mr. Elwell or Mr. Murray, or both of them, to do any improper act with the Wright ticket or any other ticket?

A. No sir, I did not.

Q. That is all.

Mr. Sherman: No questions.

[fol. 386] Cross examination.

By Mr. Aiken:

Q. Mr. Holroyd, in connection with these yellow copies and so called officer's copies, was it your practice to make notes on the back of that copy concerning the circumstance of the offense alleged?

A. It was not.

Q. But there is a place on the back of that copy for you to make notes, isn't there?

A. That is right.

Q. And didn't you make some kind of a record concerning the circumstances surrounding the offense in case that particular offense came into court to defend against the charge so that you could refresh your recollection about the incident?

A. Well, can I answer this in my own words. If it was a summons, I issued while in the control car, I would write officer's comments on the back of the summons. Radar, there was no need to write in any comments because the speed was already recorded there.

Q. Where was the speed recorded?

A. The speed was recorded on the face of the summons and then you would know that it was a radar summons.

Q. Other than what the face of the summons showed, was there any other notation relating to the speed of the car in a radar case made anywhere?

A. No sir, not unless the officer wanted to write on the back radar. I never wrote anything there where the comments were. I never write anything in, but if you get a

motorist going 42 miles an hour, you know it was issued on radar because if you issued it in the car it would be in round figures.

Q. Well, in a radar case, did you just go into court and testify that you picked up this man going 42 miles an hour, and whatever it was?

A. Yes. He was clocked on radar at the speed that was on the face of the summons.

Q. Didn't you have to show some evidence from the radar machine or something?

A. No sir, we had no graph.

[fol. 387] Q. So you had no way of telling whether or not a ticket issued by way of speeding ticket on radar was ever disposed of or not?

A. That is correct.

Q. You never knew when you might be called on to testify in a radar case in connection with a ticket that you had issued?

A. I didn't get your question.

Q. You never knew when you would be called upon to testify in court in connection with a radar ticket, did you?

A. No, only on a day before court, if the summons were in the Violations Drawer, it would be a notation on the board that Lt. Holroyd has four tickets and when I would go into court that night the Violations Clerk would tear the yellow copy off the back and hand it to me, and this way here, this is how you knew how many cases you had in court, what the offense was, and what it was for.

Q. You testified, I believe, in connection with changing a ticket, whoever wanted to change it had to check with the issuing officer?

A. Yes, if he followed the routine.

Q. And that the issuing officer had to give his consent?

A. If the officer knew that the ticket was written and the fellow came to him, as I informed you, if the officer that approached you followed the routine in the department, this was what he would do.

Q. Well, that is what was supposed to have been done under this arrangement, is it?

A. There was no arrangement, sir, there was a routine. It was no order, no arrangement, this was supposed to have been done.

Q. All right, it was a routine. But at any rate, since the Wright ticket was changed, there is no question about that, is there?

A. That is right.

Q. Do I take it then that you consented to the change in the Wright ticket?

A. No sir.

Q. You did not consent to it?

A. Unless I was approached on it.

[fol. 388] Q. Well, that is what I am asking you. Were you approached on it, did you consent to the change?

A. I don't think so.

Q. But if the routine was followed, you did, didn't you?

A. Not necessarily, because the name Wright doesn't mean anything to me. If Mr. Wright paid a fine of $15.00, then I knew that I was not approached on the summons because it would have been disposed of through the Violations Bureau.

Q. Do you remember telling Mr. Rigg in answer to "Question: Am I correct in my understanding that in relation to any summons originally issued by you, which may have been altered by another officer, this would not have been without clearing you first", and that you answered that question by saying: "He had to".

A. If he followed the routine.

Q. Well, you didn't add that, did you?

A. Well, Mr. Rigg went on to another question.

Q. Do you mean he didn't give you time to answer that question.

A. I am not stating that. While we were in there, and he was asking questions, he wants the answers immediately. He doesn't want to—he is doing an investigation there and he wanted the answers.

Q. But you did give him that answer?

A. Yes I did give him that answer.

Q. Now, Mr. Holroyd, you had a chance to look over these tickets that have been marked for identification, haven't you?

A. I have.

Q. And some of them have been issued by you, haven't they?

A. Yes they have.

Q. And they have all been changed, haven't they?

A. They have.

Q. Tell us how many did you issue or change?

A. Any of these summonses?

Q. Yes, out of that batch.

A. No sir, I made none of these changes.

Q. Well, my question I think was: Mr. Holroyd, how [fol. 389] many of these did you issue?

A. How many did I issue?

Q. Yes.

A. I am sorry, I must have misunderstood you. Four summonses.

Q. Now, you just said that you did not yourself make the changes on the tickets, those four tickets, is that right?

A. No sir, I did not.

Q. But if I understand the practice correctly, your consent to the change has to be obtained, is that right?

A. Yes, if the routine were followed.

Q. And it is safe to assume, isn't it, that in some or all of those cases, including the Wright ticket, your consent was obtained?

A. No sir, it is not safe to assume that. This happened in 1959, we are in the year 1963. It has been four and a half years ago.

Q. Well, at any rate, you consented to the change of some of the tickets that you issued in 1959, didn't you?

A. I consented to some, yes I did.

Q. And you knew too that the procedure was that when the change was made, the Violations Clerk would enter

the ticket as it was changed rather than as it was originally issued, didn't you?

A. I know nothing about the violations end. I was never a Violations Clerk, only a deputy.

Q. Well, do you mean to tell me that when a ticket was changed you did not know that it would go into the record as changed?

A. When the ticket was changed, that I did not know that it would go into the record as changed?

Q. Yes, that's right.

A. I assume I knew it.

Q. Sure you knew it, and that was the arrangement, wasn't it, with the Violations Clerk, that he would enter the ticket as changed with the amount of money for which the receipt had been issued?

A. Mr. Aiken, we had no arrangement, it was routine in the changing of the tickets. There was no arrangement.

Q. Well, that was the routine, wasn't it?

A. That was the routine, yes.

[fol. 390] Q. And you knew it?

A. I knew it, that is right. I am not denying that fact.

Q. Now, you also issued in 1959, tickets for speeding that were not changed, didn't you?

A. Yes I did.

Q. And if the speed was within the limits to which they could plead guilty, you know that a lot of those people came in and paid their fifteen dollars minimum fine, didn't you?

A. If I received my yellow copy back, I assuume that I did.

Q. Well, there isn't much question that you knew that.

A. That is right, I knew that.

Q. And you knew too, that of the municipal fine of the ten dollars fine and five dollars cost, ten dollars was to go to the county treasury, didn't you?

A. No sir, I did not.

Q. You never knew that?

A. No, I was never violations clerk.

Q. Well how long were you on the force?

A. 12 years.

Q. And you never learned that in a fine arriving out of a violation of speeding on a county road, that the fine went to the county treasurer?

A. I wasn't that much interested sir, in who got the fine. I wrote the summons and who got the fine and who got the costs, I did not know that this procedure was done a certain way. I did not know whether the state or the county got the fine. I don't know who got it. I was never violations clerk.

Q. Now, going back to the Wright ticket for a minute, Mr. Holroyd, you remember being questioned by Mr. Kaplan?

A. Yes I was.

Q. In connection with that ticket?

A. Yes.

Q. Do you remember that question, page 42, "Here is number 4453, September 15th, 1959, R. Wright, of Haddonfield, you made the complaint and a charge of speeding which was downgraded or changed to parking in prohibited [fol. 391] area, and a receipt issued by Officer Murray was for five dollars in satisfaction of a fine or penalty for parking, and the offender has a cancelled check which he has given us which shows fifteen dollars has been sent in, and not five dollars. And, the only reason I ask you about this, you have made the complaint and you have said in each case you knew of the downgrading and knew of the fines paid, do you have any knowledge of what happened in this case. It becomes as simple at that. We have a cancelled check for fifteen dollars for a five dollar fine. Is there anything you know about that." Do you remember that question?

A. Yes I do.

Q. Do you remember giving this answer, "No, that if the summons was changed, the officer came to me and I gave it the O. K."

A. Yes, he followed the routine.

Q. Well, you did give that answer?
A. I gave that answer, yes I gave that answer.
Q. That is all.

Mr. Gerry: I have no questions.

Cross examination.

By Mr. Sherman:

Q. Your last answer, does that imply that you had no personal knowledge of what happened when you assumed that would've happened?
A. I did not get your question, counselor.
Q. Of all of these matters of the changes made, is it our understanding that you did not know what happened after you issued the ticket?
A. No sir, I did not.
Q. You would assume that something happened to some of them, in accordance with what is the custom or procedure and had been prior to your time in the Borough Hall?
A. Yes, that is correct.
Q. That's all.

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[fol. 466]

IN THE CAMDEN COUNTY COURT

MOTION OF DEFENDANTS FOR NEW TRIAL AND ARREST OF JUDGMENT

The defendants move the court for the arrest of judgment and for the granting of a new trial for the following reasons:

1. The Court erred in denying defendants' motion for acquittal at the conclusion of the evidence for the prosecution.

2. The Court erred in denying defendants' motion for acquittal at the conclusion of evidence.

3. The verdict is contrary to the weight of the evidence.

4. The verdict is not supported by evidence sufficient to permit finding of guilt of the crime charged in the indictment.

5. Mistaken apprehension of the law by the jury.

6. Confessions of defendants were illegally admitted because said confessions were not voluntary.

7. The indictment does not state facts sufficient to constitute an offense against the State of New Jersey.

8. The proofs adduced by the State failed to establish any offense as charged in the indictment.

9. The confessions were illegally admitted in evidence because said confessions were obtained by violation of the defendants' constitutional rights guaranteed by the New Jersey Constitution and the 14th Amendment of the U.S. Constitution.

10. The said confessions were illegally admitted into evidence because the said confessions were obtained by force of a statute that violated the New Jersey Constitution and the 14th Amendment of the U.S. Constitution.

11. The Court lacked the jurisdiction by virtue of the provisions of Rules 8:10-2 and 8:8-2.

12. And for such other and further reasons as will be called to the attention of the Court at a hearing on this motion.

John F. Gerry, Attorney for Defendant.

[fol. 467]

IN THE CAMDEN COUNTY COURT

ORDER TO SHOW CAUSE—June 20, 1963

Timely motion having been made to the Court for a new trial and arrest of judgment in the above entitled cause,

It is ordered on this 20th day of June, 1963, that the State of New Jersey show cause before this Court at the Camden County Court House in the City of Camden, on the 26 day of July, 1963, at 9:30 a. m. of that day or as soon thereafter as the attorneys can be heard, why the verdict and finding of guilty entered in the cause should not be set aside and a new trial granted to the defendants, James Holroyd, Eugene D. Elwell and Donald Murray, and/or why judgment on the verdict of guilt in the cause should not be arrested.

It is further ordered that a copy of the motion together with a copy of this Order, both duly certified by the attorney for the defendants, shall be served upon the County Prosecutor of Camden County within 5 days from the date hereof.

Anthony C. Mitchell, J.C.C.

[fol. 468]

IN THE CAMDEN COUNTY COURT

ORDER OF CONTINUANCE—July 25, 1963

Motion for a new trial having been addressed to this Court by John F. Gerry, Esquire, and Joseph T. Sherman, Esquire, attorneys for defendants and said Motion being returnable on Thursday, July 25, 1963 and for good cause shown;

It is on this 25 day of July, 1963 Ordered that the return date of Motion for a New Trial in this cause be and the same is hereby continued for one week to August 1, 1963.

Anthony C. Mitchell, J. C. C.

IN THE CAMDEN COUNTY COURT

STIPULATION OF MOTION FOR NEW TRIAL

It is hereby agreed and stipulated by and between counsel for the parties:

1. The grounds for the Motion for New Trial of defendants hereto and the legal issues and arguments for and in opposition to said motion are identical to those setforth in the Motion for New Trial in the criminal prosecution of *State of New Jersey* vs. *Helen B. Naglee, Edward J. Garrity and Edward Virtue,* defendants, Superior Court of New Jersey, Camden County, Law Division, (Criminal), Indictment No. 327-62.

2. That the crime with which the defendants herein were charged is identical also with the crime with which the defendants were charged in the criminal prosecution of *State of New Jersey* vs. *Helen B. Naglee, et als,* and that [fol. 469] the facts in this and said prosecution are substantially similar, so far as they relate to the issues raised

in the Motion for New Trial, with the exception only of the dates upon which statements were taken of the respective defendants by the Deputy Attorney General and the Camden County Prosecutor's Office.

3. That the parties hereto will rely upon the briefs in support of and in opposition to the Motion for New Trial in the proceeding prosecution of *State of New Jersey* vs. *Helen B. Naglee, et als,* Super.

4. That counsel for the parties will submit the determination of the Motion for New Trial herein, upon the legal issues and arguments setforth in said briefs in said earlier prosecution without oral argument and adopt and incorporate by reference said briefs in this action and for the purpose of this motion, by reason of expediency and for the sake of brevity and by reason of the identity of trial counsel for the State and the trial Judge in this and the cited earlier prosecution.

5. That there are no facts in this and the cited earlier prosecution materially different for the purpose of the Motion of New Trial herein.

Norman Heine, Camden County Prosecutor, Attorney for Plaintiff Respondent James G. Aiken, Assistant Prosecutor.

Joseph T. Sherman, Esquire, Attorney for Defendant Eugene D. Elwell.

John F. Gerry, Esquire, Attorney for defendants James Holroyd and Donald Murray.

[fol. 470]

IN THE CAMDEN COUNTY COURT

DECISION ON MOTION FOR NEW TRIAL—Decided June 21, 1963

Appearances:

Mr. James G. Aiken, argued the cause for the State of New Jersey

(Mr. Norman Heine, Camden County Prosecutor.)

Mr. Angelo D. Malandra argued the cause for the Defendants.

MITCHELL, J. C. C.

Pursuant to orders from the Supreme Court of the State of New Jersey, the Attorney General's Office conducted an investigation of the Municipal Court system of certain municipalities in Camden County including the Borough of Bellmawr. Before the investigation of the Attorney General's Office was completed, the matter was turned over to the Office of the Camden County Prosecutor to continue the investigation.

During the course of the investigation both the Attorney General's Office and the Prosecutor's Office took statements from the defendants at bar.

The Prosecutor presented the matter to the September 1962 Grand Jury for Camden County, and a true bill charging the crime of conspiracy to pervert and obstruct the due administration of the Motor Vehicle Traffic Laws contrary to N.J.S. 2A:98-1, and 2A:98-2 was presented for prosecution.

The indictment charged the defendants, Helen B. Naglee, Edward J. Garrity, and Edward Virtue, with conspiracy "to pervert and obstruct the due administration of the motor vehicle traffic laws of the State contrary to N.J.S. [fol. 471] 2A:98-1 and 2A:98-2, by altering and falsifying traffic summonses and complaints" commonly referred to as traffic tickets, by downgrading charges of "driving while under the influence of intoxicating liquor" R.S. 39:4-50 to

a lesser offense of careless driving R.S. 39:4-97, or to a violation of the disorderly conduct provision of N.J.S. 2A:170-29. The indictment further charged that the defendants would then cause false entries to be made in the dockets of the Municipal Court of the Borough of Bellmawr and that a consideration in money was paid by the violator to the defendants, which money was not legally accounted for nor accurately reflected in the Municipal records.

These alleged violations were charged to have taken place in the Borough of Bellmawr, Camden County, New Jersey, where defendant, Helen B. Naglee, was the violations clerk; defendant, Edward J. Garrity, was the chief of police; and defendant, Edward Virtue, was a policeman in the Police Department.

These defendants were tried for the crime of conspiracy, and on May 13, 1963, a Camden County Jury returned a verdict of guilty as charged against each of the defendants.

The matter is now before the Court as a result of a motion by the defendants for a new trial and arrest of judgment. The brief of the defendants set forth the following legal arguments:

1. The indictment failed to charge a crime and the proofs at the trial did not support a conviction of the crime alleged in the indictment.

2. The confessions offered in evidence over the objections of the defendants were not voluntary confessions.

3. The admission in evidence of the confessions deprived the defendants of their constitutional rights guaranteed by the Fourteenth Amendment.

4. The Statute, N.J.S. 2A:81-17.1 is unconstitutional [fol. 472] and violates the New Jersey Constitution and the Fourteenth Amendment of the United States Constitution.

5. The motions for judgment of acquittal should have been granted.

6. The verdict was contrary to the weight of the evidence.

I. The indictment failed to charge a crime and the proofs at the trial did not support a conviction of the crime alleged in the indictment.

The indictment presented by the Grand Jury charged the defendants with making false entries into the docket of the Municipal Court of the Borough of Bellmawr. N.J.S. 2A:136-1 renders any alteration or falsification of any public record, book or other proceedings of or belonging to any court in this State a misdemeanor. It follows, therefore, that the indictment sets forth a conspiracy to commit a crime.

In *State* v. *La Fera,* 35 N.J. 75, 171 A2d 311, (1961) at p. 81 our present Supreme Court stated that:

> "A charge must sufficiently identify the criminal event to enable the accused (1) to defend and (2) to defeat a subsequent prosecution for the same offense. . . . Hence, the indictment must allege all the essential facts of the crime, lest an accused be brought to trial for an offense the grand jury did not find. . . . Pleading is never an end in itself. It is merely the vehicle for the merits of a controversy. The vehicle is sufficient if it conforms with fairness, and in the case of an indictment the critical criteria are those we have just outlined. If an indictment satisfied those demands, the charge is sufficiently stated. An indictment should not be dismissed unless its insufficiency is palpable."

[fol. 473] Taking into consideration the above criteria, this Court finds that the indictment sufficiently set forth accusation against which the defendants could adequately defend themselves.

Counsel for the defense ably argues that R.R. 8:10-2 requires that any person who aids in the disposition of a traffic ticket or summons in any manner other than that authorized by the Court shall be proceeded against for criminal contempt and not by indictment for conspiracy. It is not necessary to decide whether or not this Rule of the Supreme Court of New Jersey is exclusive in remedy, since an indictment charging the crime of altering or falsifying a public record contrary to N.J.S. 2A:136-1 is a crime and was sufficiently set forth in the indictment.

Nor is it necessary to decide whether or not a traffic summons is a public record under N.J.S. 2A:136-1, since the falsification of the court docket is clearly a falsification of a public record. No evidence was introduced in trial to prove that a traffic summons in se is a public record.

The facts offered by the State were sufficient in law for a jury to determine that the defendants were guilty of the crime charged.

II. The confessions offered in evidence over the objections of the defendants were not voluntary confessions.

III. The admission in evidence of the confessions deprived the defendants of their constitutional rights guaranteed by the fourteenth amendment.

(In light of the identity of issues set forth in II and III, the Court will consider these two arguments together.)

It is well settled that the Fourteenth Amendment to the [fol. 474] United States Constitution renders coerced or involuntary confessions inadmissible in State prosecutions. Payne v. Arkansas, 356 *U.S.* 560; 78 *S.Ct.* 844; 2 *L.Ed.* 975 (1958).

The question of voluntariness of a confession is preliminarily a mixed question of law and fact to be decided by the trial judge. Voluntary confessions are admissible and involuntary confessions are inadmissible. Should the trial judge find the confessions admissible, the issue of voluntariness is then submitted to the jury for its finding on the same issue.

Historically, physical coercion was thought to be necessary to render a confession involuntary. Subsequently, abnormal periods of interrogation, lack of food and sleep, and finally psychological coercion were elements to be considered in rendering a confession involuntary. It is, of course, the obligation of the State to prove that the defendant's will had not been overborne and that the fundamental fairness requirements of the due process clause had not been violated. State v. Tassiello, 39 *N.J.* 282; 188 *A2d* 406 (1963).

In the case at bar, there is no allegation that any physical force was imposed, nor was there any evidence of unreasonably prolonged interrogation, nor was there any evidence of deprivation of sleep or food.

Counsel for the defendants urges that the confessions in the case at bar are involuntary because the witnesses were informed that if they did not give the statements they would forfeit their offices under the provisions of *N.J.S.* 2A:81-17.1. This Statute provides:

> "Any person holding or who has held any elective or appointive public office, position or employment (whether State, county or municipal), who refuses to testify upon matters relating to the office, position or employment in any criminal proceeding wherein he is a defendant or is called as a witness on behalf of the [fol. 475] prosecution, upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself or refuses to waive immunity when called by a grand jury to testify thereon or who willfully refuses or fails to appear before any court, commission or body of this State which has the right to inquire under oath upon matters relating to the office, position or employment of such person or who, having been sworn, refuses to testify or to answer any material question upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself, shall, if holding elective or

public office, position or employment, be removed therefrom or shall thereby forfeit his office, position or employment and any vested or future right of tenure or pension granted to him by any law of this State provided the inquiry relates to a matter which occurred or arose within the preceding five years. Any person so forfeiting his office, position or employment shall not thereafter be eligible for election or appointment to any public office, position or employment in this State."

At the taking of the original statement of Edward Virtue, the Deputy Attorney General, Budd M. Rigg, Esq., asked Mr. Virtue the following opening questions in re the voluntariness of his confession:

"Q. You are a Sergeant?

A. Detective.

Q. As you know by now, Detective, I am working under a supreme court order issued last June directing me to investigate certain irregularities in the handling of motor vehicle matters in the municipal court here in Bellmawr, together with various persons having any connection with the court, including the police department. That is why I scheduled this day, to ask you questions pertaining to this investigation.

[fol. 476] Before I do, I want to advise you anything you say must be voluntarily, of your own free will, without threats or coercion or promise or reward and anything you do say may be used against you or any person in a subsequent criminal proceeding or proceedings in the courts of our state.

You do have under our statutes, as you may know, a privilege to refuse to disclose any matters which may tend to incriminate you; however, if you make such a disclosure with knowledge of this right and without coercion, you thereby waive this right or privilege with regard to any phase of this investigation.

This right or privilege that you have is limited to the extent that you as a police officer when sworn and asked questions pertaining to your office and your conduct therein, if you refuse to answer, you then may be subject to a proceeding to have you removed from the department."

In a subsequent statement, taken of Mr. Virtue, Assistant Camden County Prosecutor, Sidney Kaplan, Esq., asked the following opening questions in re the voluntariness of his statement:

"Q. Now, before we begin I want to advise you anything you say must be voluntary, of your own free will and accord, without any threats, promises or coercion, and anything you say may be used against you, or against any person in any subsequent proceeding in the courts of our State. You do have the privilege under our laws to refuse to make any disclosures which you feel may tend to incriminate you. You understand that?

A. Yes, sir.

Q. You further understand this investigation was first undertaken by the Attorney General, by Budd Rigg, and by direction of the Supreme Court it has [fol. 477] been handed to us to possibly fill in some gaps, and that is why we are here . . . "

Substantially the same opening statement was made by Mr. Rigg to Chief Edward J. Garrity when Chief Garrity gave his statement:

"Q. Before I get started, because of the lateness of the hour and other commitments, I will undoubtedly have to question you again, as well as Mrs. Naglee and perhaps one or two of the officers.

I would just like to establish a few things here quickly now. Before I do, however, you I know are aware of the purpose of the investigation of your be-

ing here today. Before I ask you any questions concerning this investigation into the alleged irregularities of the handling of municipal traffic violations by your department, I want to advise you that anything you say must be said of your own free will and accord without any threats of promises or coercion, and anything you say may be, of course, used against you or any other person in any subsequent criminal proceedings in the courts of our State.

You do have under our laws, as you probably know, a privilege to refuse to make any disclosure which may tend to incriminate you. If you make a disclosure with knowledge of this right or privilege, voluntarily, you thereby waive that right or privilege in relation to any other questions which I might put to you relevant to such disclosure and this investigation.

This right or privilege which you have is somewhat limited to the extent that you as a police officer under the laws of our state may be subjected to a proceeding to have you removed from office if you refuse to answer a question put to you under oath pertaining to [fol. 478] your office or your function within that office. It doesn't mean, however, you can't exercise the right. You do have the right.

A. No, I will cooperate.

Q. Understanding this, are you willing to proceed at this time and answer any questions?

A. Yes."

In Chief Garrity's subsequent statement to Assistant Prosecutor Kaplan the following opening transpired:

"Q. Chief Garrity, of course, the background of this is the idea that in Bellmawr there was a policy or practice of what is commonly known as fixing tickets, which meant altering or changing traffic tickets, and I believe that you are familiar with the fact that that is something that has been suggested.

Now, I would like to go over these. Before we go on, I explained to you we are working a Supreme Court order dated last June directing originally the Attorney-General to investigate the Municipal Court in Bellmawr, and now it has been referred to the Prosecutor of Camden County for further investigation, to supply facts that were not obtained by Mr. Rigg in his capacity as Deputy Attorney-General concerning irregularities in the handling of motor vehicle matters.

There are some questions we wanted to ask you and before I do I want to advise you that anything you say must be voluntary, of your own free will and accord, without any threats, promise or coercion. Anything you say may be used against you or any person in any subsequent proceeding in the courts of our state.

You do have the privilege under our laws to refuse to make any disclosures which you feel may tend to incriminate you.

[fol. 479] Now, shall we proceed?

A. Yes.

Q. You understand your rights?

A. Yes."

As to Mrs. Naglee, the following conversation transpired at the outset of her statement to Mr. Riggs:

"Q. Mrs. Naglee, as you know I am working under a supreme court order dated this last June whereby or whereunder I am directed to conduct an investigation of certain irregularities in the handling of motor vehicle cases in the municipal court, and apparently the police department here in the Borough of Bellmawr, and it is pursuant to that order that I have asked you to answer some questions which I want to put to you.

Before you do, however, I want you to be fully aware of the fact that anything you say must be voluntary

and of your own free will and accord without any threats, promises or reward or any coercion.

You do have a privilege to refuse to make any disclosures or give any answers which tend to incriminate you. Things that you tell me today may be used against you or any other person in a subsequent criminal proceeding. That is why you have that privilege under the law.

However, if you do answer a question and make a disclosure, by so doing you thereby waive this right or privilege that you have in relation to the entire investigation.

You understand that?

A. I do.

Q. And understanding that you are willing to proceed then?

A. Yes."

Assistant Prosecutor Sidney Kaplan gave Mrs. Naglee [fol. 480] the following instructions in the beginning of her statement to him:

"Q. Mrs. Naglee, to get this matter off the ground, I would like to question you about certain summonses, and I want to inform you I am the Assistant Prosecutor and that this office is working under a Supreme Court order dated last June directing, originally, the Attorney General of New Jersey to investigate the Municipal Court of Bellmawr with reference to irregularities in the handling of Motor Vehicle matters, and the Supreme Court has further instructed the Attorney General to submit the case to the prosecutor of Camden County for further investigation. I want to ask you some questions, but before I do I want to advise you anything you say must be voluntary and of your own free will and accord, without any threats, promises or coercion, and anything you say may be used against you, or against any other person in any sub-

sequent actions, and you have the privilege of refusing to make any disclosures which you feel may incriminate you. Understand that?

A. Yes.

Q. And you are willing to proceed?

A. Yes."

At the end of this statement the following colloquy took place between Mr. Kaplan and Mrs. Naglee:

"Q. I want to ask you one question. Have we harassed you in any way or made it uncomfortable for you or pressed you for anything you didn't want to talk about?

A. No.

Q. And we are apprised of the fact you have a heart condition?

A. I do have.

Q. You understand that what we are doing is what [fol. 481] we are required to do by a higher authority, and that although there is nothing personal in our actions, we must be as thorough as possible to protect this office. But, I just want to be sure that we haven't done anything to harass you.

A. You have not.

Q. Thank you, you have been very helpful. That ends it as far as I am concerned."

It is to be noted that there was no statement made by either Mr. Rigg or Mr. Kaplan to Mrs. Naglee to the effect that she would lose her job if she refused to testify. It is well settled, however, that if the verdicts against Mr. Virtue and Chief Garrity are set aside, the verdict against Mrs. Naglee must also be set aside, since at least two people must be found guilty of a conspiracy for the verdict to be valid.

The narrow question before the Court at this juncture is whether or not the fact that Officer Virtue and Chief Gar-

rity were informed that they would forfeit their public office if they refused to give a statement is tantamount to such a threat so as to render their confession involuntary as a matter of law.

From the admonition of Assistant Prosecutor Kaplan at the outset of the statements taken by him of Officer Virtue and Chief Garrity cited above, it is obvious that this investigation is a continuance and integral part of the original investigation of Deputy Attorney General Rigg. Therefore, the statements to both of them by Mr. Rigg in reference to their loss of public office if they do not testify would logically be incorporated in the subsequent statement taken by Mr. Kaplan. In State v. Guild, 10 *N.J.L.* 163 (1828) the New Jersey Supreme Court states at *page* 180 that the test of whether a subsequent confession is involuntary if a prior one is involuntary is "whether it (the influence) continued to exert its force." Here there is no question that the forfeiture of office if they refused to tes- [fol. 482] tify was still in force.

The grounds for setting aside a confession on the grounds of being involuntary are continually expanding since "involuntary" confession relates to the subject of credibility and may not be used "because of the probability that the end-product of a coercive process is unreliable and unworthy of credit." State v. Smith, 32 *N.J.* 501, p. 558; 161 *A2d* 520 (1960).

Nonetheless, the issue of voluntariness is a factual question to be decided in each case. Here, each defendant was advised of his right not to testify and that any statement made by them may be used against them. The entire text of the statements revealed nothing less than full understanding and cooperation. There is no evidence that anyone's will was overborne. The defendants never once indicated at the time of giving the statements that they would not have given the statements if it were not for the fact they would have to forfeit their public office; nor has any authority been cited to the effect that the possibility of forfeiture of public office is such a threat as to render a confession involuntary.

Considering all the factors, it is the decision of this Court that the confessions made by the defendants herein are voluntary as a matter of law.

IV. The statute, *N.J.S.* 2A:81-17.1 is unconstitutional and violates the New Jersey Constitution and the Fourteenth Amendment of the United States Constitution.

It is argued by counsel for the defense that *N.J.S.* 2A:81-17.1, which requires forfeiture of office for public officials who refuse to testify, is unconstitutional and hence null and void in that it violates the New Jersey Constitution and the Fourteenth Amendment of the United States Constitution by compelling a person to incriminate himself by [fol. 483] depriving him of his life, liberty, or property without due process of law.

The Fifth Amendment of the United States Constitution provides that no person "shall be compelled in any criminal case to be a witness against himself." The Fourteenth Amendment of the Federal Constitution provides that no State shall "deprive any person of life, liberty or property, without due process of law."

Basically, the first Ten Amendments, commonly referred to as the "Bill of Rights", of the United States Constitution pertain to the Federal Courts and are applicable to State Courts and proceedings only when they are incorporated by judicial decision into the "due process" clause of the Fourteenth Amendment.

The privilege against self-incrimination guaranteed by the Fifth Amendment to Federal proceedings has not yet been construed by the United States Supreme Court to apply to State proceedings under the "due process" clause of the Fourteenth Amendment. In the United States Supreme Court decision of Adamson v. California, 332 *U.S.* 46, 67 *S. Ct.* 1672, 91 *L. Ed.* 1903 (1947), Mr. Justice Reed speaking for the majority of the Court stated:

"It is settled law that the clause of the Fifth Amendment, protecting a person against being compelled to be a witness against himself, is not made effective by

the Fourteenth Amendment as a protection against state action on the ground that freedom from testimonial compulsion is a right of national citizenship, or because it is a personal privilege or immunity secured by the Federal Constitution as one of the rights of men that are listed in the Bill of Rights."

The Adamson case reaffirmed Twining v. New Jersey, 211 *U.S.* 78 (1908), which is the landmark case in deny-[fol. 484] ing the privilege of self-incrimination to defendants in State Courts as a fundamental Federal right.

This Court is well aware of the strong dissent in the Adamson case by Mr. Justice Black wherein he states:

"The Twining case was the first, as it is the only decision of this Court which has squarely held that states were free, notwithstanding the Fifth and Fourteenth Amendments, to extort evidence from one accused of crime. I agree that if Twining be reaffirmed, the result reached might appropriately follow. But I would not reaffirm the Twining decision. I think that decision and the 'natural law' theory of the Constitution upon which it relies degrade the constitutional safeguards of the Bill of Rights and simultaneously appropriate for this Court a broad power which we are not authorized by the Constitution to exercise.

I cannot consider the Bill of Rights to be an outworn 18th Century 'straight jacket' as the Twining opinion did. Its provision may be thought outdated abstractions by some. And it is true that they were designed to meet ancient evils. But they are the same kind of human evils that have emerged from century to century wherever excessive power is sought by the few at the expense of the many. In my judgment the people of no nation can lose their liberty so long as a Bill of Rights like ours survives and its basic purposes are conscientiously interpreted, enforced and respected so as to afford continuous protection against old, as well

as new, devices and practices which might thwart those purposes. I fear to see the consequences of the Court's practice of substituting its own concepts of decency and fundamental justice for the language of the Bill of Rights as its point of departure in interpreting and [fol. 485] enforcing that Bill of Rights. If the choice must be between the selective process of the Palko decision applying some of the Bill of Rights to the States, or the Twining rule applying none of them, I would choose the Palko selective process. But rather than accept either of these choices, I would follow what I believe was the original purpose of the Fourteenth Amendment—to extend to all the people of the nation the complete protection of the Bill of Rights. To hold that this Court can determine what, if any, provisions of the Bill of Rights will be enforced, and if so to what degree, is to frustrate the great design of a written Constitution."

This Court is also aware that the Adamson case was a 5 - 4 decision, and that since 1947 notable expansion of the "due process" clause has taken place, *e.g.* the new rule that illegally seized evidence is inadmissible in a State Court. Mapp v. Ohio, 367 *U.S.* 643, 6 *L. Ed. 2d* 1081 (1961).

In spite of the above dissent and the continually broadening trend of the "due process" clause, a trial court must take the law as it finds it and cannot create new law at this level. It follows, therefore, that *N.J.S.* 2A:81-17.1 does not violate the Federal Constitution.

Counsel for the defense also argues that *N.J.S.* 2A:-81-17.1 violates the New Jersey Constitution. The New Jersey Constitution, however, does not provide for the privilege against self-incrimination. In Laba v. Newark Board of Education, 23 *N.J.* 364, 129 *A2d* 273 (1957), the New Jersey Supreme Court stated:

"Unlike substantially all other states, New Jersey's Constitution contains no expressed provision embodying the privilege against self-incrimination. . . ."

[fol. 486] In State v. DeCola, 33 *N.J.* 335, 164 *A2d* 379 (1960) Chief Justice Weintraub in addressing himself to this issue stated:

> "In New Jersey, the privilege, although not assured by organic law, nonetheless was originally protected as a matter of common law and now is by statute."

It follows necessarily that *N.J.S.* 2A:81-17.1 requiring the forfeiture of office to public officers who refuse to give statements does not violate any mandate of the New Jersey Constitution.

A statutory right against self-incrimination, however, does exist in New Jersey. *N.J.S.A.* 2A:84A-19 provides in part:

> "... every natural person has a right to refuse to disclose in an action or to a police officer or other official any matter that will incriminate him or expose him to a penalty or a forfeiture of his estate, except that under this rule:
>
> (c) no person has a privilege to refuse to disclose any matter which the statutes or regulations governing his office, activity, occupation, profession or calling, or governing the corporation or association of which he is an officer, agent or employee, require him to record or report or disclose except to the extent that such statutes or regulations provide that the matter to be recorded, reported or disclosed shall be privileged or confidential;"

It is obvious from section (c) of the above cited Statute that the statutory privilege against self-incrimination does not apply to the defendants herein. It is fundamental that rights established by the legislature can be limited by the legislature in their application. "Subject to the requirement of due process, there would appear to be nothing in [fol. 487] either our Federal or State Constitution which

prohibits our Legislature from curbing the scope of the privilege." Laba v. Newark Board of Education (supra).

In the Laba case at *page* 393, our Supreme Court cites *N.J.S.* 2A:81-17.1 with approval. In that same case the Court cited Pfitzinger v. United States Civil Service Commission, 96 *F. Supp.* 1 (1951) where the court suggested:

> "... that a federal employee who is called before the Civil Service Commission to account for alleged improper political activity may not assert that he is privileged to refuse to answer because of the danger of the loss of his employment; it described removal from his position as a 'remedial sanction' and noted that 'the imposition of such a remedial sanction, although it may be of serious consequence to the person affected, may not be regarded as a forfeiture of a right' but only as 'the withholding of a privilege'."

N.J.S. 81:17.1 is, therefore constitutional and not violative of any rights conferred by the United States Constitution, the New Jersey Constitution, or any New Jersey Statute.

V. The motions for judgment of acquittal should have been granted.

A motion for a judgment of acquittal at the end of the State's case is to be tested in the light of the evidence at that time and the State is entitled to all of its favorable testimony and the favorable inferences which arise from the evidence and from which the jury could find, beyond a reasonable doubt, that the defendants committed the crime. State v. Fiorelli, 36 *N.J.* 80, 174 *A2d* 900 (1961).

Upon a motion for a judgment of acquittal at the completion of the case, the question before the trial court is [fol. 488] whether the evidence, viewed in its entirety, is such that the jury could find therefrom beyond reasonable doubt that defendants have committed the crime. State v. Cooper, 10 *N.J.* 532, 92 *A2d* 786 (1953).

In the instant matter, at the end of the State's case, there was ample evidence and legal logical inferences therefrom, from which the jury could find, beyond a reasonable doubt, that the defendants committed the crime of conspiracy as charged.

Likewise, at the completion of the case, there was ample evidence before the court which, when viewed in its entirety, was such that the jury could properly find the defendants guilty beyond a reasonable doubt.

Therefore, the motions for acquittal were properly denied.

VI. The verdict was contrary to the weight of the evidence.

In order to set aside a jury verdict as being against the weight of the evidence it must clearly and convincingly appear that the verdict was the result of mistake, partiality, prejudice or passion. *R. R.* 1:5-1 (a).

The criteria for setting aside a jury verdict as being against the weight of the evidence was set down by our present Supreme Court in State v. Landeros, 20 *N.J.* 76; 118 *A2d* 524 (1955) where the Court stated at *pages* 82 and 83:

> "But the power of an appellate tribunal to reject the findings of a jury is subject to limitations. In the first instance, we may not interfere with the constitutional right of trial by jury by weighing the evidence and substituting our judgment for that of the jury, Hager v. Weber, 7 N.J. 201, 210 (1951); nor may we set aside a verdict merely because, in our opinion, we or the jury upon the same evidence might have found other- [fol. 489] wise, Boesch v. Kick, 97 N.J.L. 92, 97 (Sup. Ct. 1922); VanPelt v. Hartough, 31 N.J.L. 331, 335 (Sup. Ct. 1865); Hager v. Weber, supra; so long as 'a verdict * * * rests upon testimony competent to sustain the inference implied in such a finding (it) is

ordinarily conclusive' upon us, Haber v. Weber, supra; for 'our review upon appeal is aimed only at correcting injustice resulting from obvious failure by the jury to perform its function,' State v. Haines, 18 N.J. 550, 565 (1955), and the error of the verdict must appear to us as an 'inescapable conclusion,' Hager v. Weber, supra."

In applying the above criteria for setting aside a jury verdict, this Court finds that the record discloses sufficient evidence for the jury to return a guilty verdict, and that verdict will not be set aside as a matter of law.

For the reasons expressed in the body of this Opinion, the motion by the defendants for a new trial and arrest of judgment is denied.

[fol. 490]

IN THE CAMDEN COUNTY COURT

ORDER DENYING MOTION FOR NEW TRIAL, ETC.—
August 1, 1963

Motion for New Trial having been moved on behalf of all defendants herein by their Counsel and the Court having considered the Briefs in Support of and in Opposition to the Motion for New Trial in the case of State of New Jersey vs. Helen B. Naglee, et als and the stipulation of counsel hereto adopting those briefs and legal arguments in lieu of the filing of briefs by the respective parties on the instant motion herein and counsel having further stipulated the submission of said motion for the determination of this Court without oral argument and for good cause shown and for the reasons and grounds set forth by this Court in its opinion and ruling dated June 21, 1963 on the Motion for New Trial and Arrest of Judgment in the aforesaid case of *State of New Jersey* vs. *Helen B. Naglee, Edward J. Garrity and Edward Virtue* New Jersey Superior Court, Camden County, Law Division (Criminal), Indict. 327-62.

It is on this 1st day of August, 1963 Ordered that the Motion for a New Trial and Arrest of Judgment herein be and the same is hereby denied.

Anthony C. Mitchell, J.C.C.

[fol. 491]

IN THE CAMDEN COUNTY COURT

JUDGMENT ENTERED—September 26, 1963

The defendant on 3/28/63 having entered a plea of Not Guilty to Indictment No. 339-62 for the crime of Conspiracy and the defendant having on 5/27/63 Been Tried with a Jury and a verdict of Guilty as to all Defendants having been rendered on 6/7/63.

It is, therefore, on this 26th day of September, 1963,

Ordered and Adjudged that the defendant be and is sentenced to Three months County Jail, Suspended, on condition that $100.00 fine is paid, as to all Defendants.

Mr. Sherman, Esq. attorney for Eugene D. Elwell that an appeal is intended. Bail continued on all indictments.

Granted by the Court.

Mr. Gerry, Esq. attorney for Holroyd, Donald Murray, that an appeal is intended. Bail continued on all other indictments.

Granted by the Court.

Anthony C. Mitchell, Judge.

[fol. 492]

IN THE CAMDEN COUNTY COURT

NOTICE OF APPEAL

Notice is hereby given that Donald Murray, James Holroyd and Eugene D. Elwell, defendants-appellants, appeal to the Superior Court, Appellate Division, from the

whole of the final verdict and judgment of conviction entered by and in the Camden County Court, Criminal Division, in the above-entitled action and against the defendants-appellants December 16, 1963.

John F. Gerry, Attorney for Defendants-Appellants.

It is hereby certified that on December 16, 1963 a stenographic transcript was ordered for and the fee of transcription paid to the stenographic reporter pursuant to R.R. 1:2-8(3) and 8 (a).

So Certified:

John F. Gerry, Attorney for Defendants-Appellants.

[fol. 494]

IN THE SUPREME COURT OF NEW JERSEY

A-58 September Term 1964

STATE OF NEW JERSEY, Plaintiff-Respondent,

vs.

JAMES HOLROYD, EUGENE D. ELWELL and DONALD MURRAY, Defendants-Appellants.

OPINION—Decided March 15, 1965

Argued January 5, 1965 Decided March 15, 1965

Mr. John A. Yacovelle, Jr. argued the cause for the Defendants-Appellants (Mr. Samuel P. Orlando, attorney).

Mr. Norman Heine, Camden County Prosecutor, argued the cause for the Plaintiff-Respondent.

The opinion of the court was delivered.

PER CURIAM:

The defendants, James Holroyd, Eugene D. Elwell, and Donald Murray were tried before a jury in Camden County

and convicted for conspiracy to obstruct the due administration of the Motor Vehicle Traffic Laws. After the trial judge denied their motion for a new trial, they appealed. We certified the matter on our own motion before argument in the Appellate Division.

The indictment charged that between January 1, 1959, and June 29, 1961, the defendants as police officers of the Borough of Barrington unlawfully agreed to dispose of certain motor vehicle traffic offense cases by downgrading the tickets originally issued by the arresting officer from operating offenses (*e.g.*, speeding) to standing offenses (*e.g.*, illegal parking), and that in furtherance of such illegal agreement parts of "fines" paid by the traffic offend-
[fol. 495] ers were unlawfully diverted. The overt acts specifically set out in the indictment concerned a speeding ticket issued by the defendant Holroyd to one Robert Wright on September 15, 1959.

At the trial Wright testified that he had been given a speeding ticket on September 15, 1959, for driving 41 miles per hour in a 25 mile per hour zone. On October 14, 1959, Wright left his copy of the ticket and a $15.00 check at the Borough Hall. On October 16, 1959, the check was deposited in the Borough account. The magistrate of the Borough's municipal court, when shown the Wright ticket, testified that it had been issued by defendant Holroyd and identified a receipt for $5.00 for a parking violation, dated January 8, 1960, as having been issued by defendant Murray. The magistrate further testified that defendant Elwell was the violations clerk in 1959 and that defendant Murray was violations clerk during 1960. The functions of the violations clerk were to keep a record showing the disposition of all tickets issued, and to accept fines and give receipts.

The official documents of the Borough were introduced in evidence. With regard to the Wright ticket, they showed: Wright had been issued a ticket for speeding on September 15, 1959, and the ticket had been visibly altered from speeding to illegal parking. An entry in the traffic docket

dated January 8, 1960, showed a plea of guilty to illegal parking by Wright and the imposition and collection of a $5.00 fine. The records did not indicate a receipt of the $15.00 Wright check, dated October 14, 1959, and the records did not account for the $10.00 difference between the $15.00 payment and the $5.00 receipt.

[fol. 496] The State introduced in evidence two statements made by each defendant. The first statement was given to Deputy Attorney General Budd M. Rigg on November 2, 1961, and the second was given to Camden County Assistant Prosecutor Sidney Kaplan on September 28, 1962.

In his statements, Elwell admitted that he altered a number of tickets he had issued because of hardship on the violator or because of friendship or at the request of fellow police officers. He also said that in addition to his duties as a patrolman, he had served as violations clerk during the year 1959. As violations clerk, after a speeding summons had been altered to parking, he would enter it in the docket book as a parking violation. He admitted endorsing the $15.00 Wright check but had no explanation for his failure to account for its receipt in the court's records. In his statements, Murray admitted altering tickets and consenting that tickets be altered because of hardship on the violators or friendship for them. In addition to his job as patrolman, he served as violations clerk for 1960. With reference to the Wright ticket, he acknowledged that as violations clerk he had received $5.00 for illegal parking and had made out a receipt accordingly. In his statements, Holroyd admitted that he had participated in the practice of altering tickets from speeding to illegal parking. He admitted that he had issued Wright's speeding ticket but could not recall whether he had been the officer who physically altered it. However, he stated that it was the practice that a ticket would not be altered without the issuing officer's consent.

[fol. 497] All the defendants testified in their own behalf, and gave testimony generally consistent with that introduced through their statements.

On this appeal the defendants contend that the trial court erred in admitting their statements into evidence without holding a hearing to determine whether the statements were voluntarily made. Before the statements were introduced into evidence, the trial judge excused the jury and held a hearing to determine their admissibility. At that hearing the defendants objected to the admissibility of the statements on the ground that they had been coerced by Mr. Rigg's warning to them that if they failed to answer, proceedings might be instituted against them to have them removed from the police department. No testimony was produced by either the State or the defendants as to the manner in which the statements were taken. The entire hearing was devoted to determining what parts of the various statements should be deleted as irrelevant to the case. Thereafter, the statements as deleted were read to the jury by the court reporter who had taken and transcribed them. At the oral argument before us the State contended that its failure to introduce evidence to show the circumstances under which the statements were taken was due to an understanding among the parties and the court that since the defendants' sole objection was on the narrow legal ground that Mr. Rigg's warning, per se, made their statements involuntary, the State was not required to go through the formality of showing that the statements were not taken under otherwise coercive circumstances. We directed that this issue be returned to the trial court for clarification. At the subsequent hearing conducted by the trial court, the [fol. 498] respective recollections of the judge, the prosecutor, and counsel who tried the defendants' case were in agreement that the State need not introduce evidence to show that the statements were not obtained as a result of physical or mental coercion; the defendants merely reserved their right to question the voluntariness of their statements on the narrow legal issue concerning Mr. Rigg's

warning. Furthermore, during the hearing before the judge in the absence of the jury and during the remaining course of the trial, defense counsel did not object to the failure of the State to offer testimony relating to the taking of the statements, nor did they offer testimony themselves on this point. We therefore conclude that in the circumstances the State was not required to come forward with evidence of the voluntariness of the statements.

The defendants also argue that the failure of the State to produce evidence before the jury on the issue of voluntariness requires reversal. However, a reading of the transcript of the hearing on remand convinces us that the prosecutor, the court, and defense counsel understood that the State need not produce any evidence before the jury as to the manner in which the statements were taken.

Defendants next contend that since neither the State nor they produced any evidence before the jury on the issue of the voluntariness of their statements, the trial court erred in instructing the jury on that issue. However, the defendants' statements, in question and answer form and including Mr. Rigg's warning, had been read to the jury. And defense counsel referred to Mr. Rigg's warning during their summations. Furthermore, no objection was [fol. 499] made by defense counsel to the trial court's charge. Under these circumstances there is no merit to defendants' contention.

Defendants next contend that, as a matter of law, their statements were involuntary because of Mr. Rigg's warning that their failure to answer his questions might result in their losing their positions with the police department. This very issue was discussed at length in our recent opinion in *State* v. *Naglee,* *N.J.* (1965). Since the circumstances in the present case are substantially similar to those in the *Naglee* case and the applicable legal principles are identical to those that governed that case, our holding there that those statements were voluntary is determinative of this issue in the present case. Indeed, the

circumstances of the giving of the defendants' statements in the present case are even more persuasive of voluntariness than in *Naglee*. For here the defendants gave their statements to Mr. Rigg in the presence of their lawyer.

The defendants complain about certain portions of their statements being read to the jury. As we have already mentioned, the statements were taken in question and answer form. The defendants' objections are focused upon certain of the questions of the interrogators which assumed the defendants' guilt in a manner in which the defendants contend was prejudicial. From our examination of these questions, and in view of the defendants' repeated admissions that they had participated in downgrading speeding tickets, we are satisfied that the possibility of prejudice to the defendants is far too remote to warrant reversal on this ground.

[fol. 500] The defendants further contend that the acts alleged in the indictment do not constitute the crime of conspiracy under *N.J.S.A.*2A:98-1(h) since they amounted to a contempt of court under *R.R.*8:10-2. As we said in *State* v. *Naglee, supra,* this court in the exercise of its rule-making power cannot deprive the Legislature of its right to determine the type of conduct which constitutes a substantive crime.

Finally, the defendants contend that their motion for judgment of acquittal at the end of the State's case and at the end of the entire case should have been granted, and that the verdict was contrary to the weight of the evidence. From the facts that we have outlined earlier in this opinion, it is clear that these contentions are without merit.

Judgment affirmed.

[fol. 501]

IN THE SUPREME COURT OF NEW JERSEY

Appeal Docket No. 4579

Criminal Action

On Appeal

STATE OF NEW JERSEY, Plaintiff-Respondent,

vs.

JAMES HOLROYD, et al., Defendants-Appellants.

MANDATE ON AFFIRMANCE—March 15, 1965

This cause having been duly argued before this Court by Mr. John A. Yacovelle, Jr., counsel for the appellant and Mr. Norman Heine, counsel for the respondent, and the Court having considered the same,

It is hereupon ordered and adjudged that the judgment of the said Superior Court—Law Division is affirmed with costs; and it is further ordered that this mandate shall issue ten days hereafter, unless an application for rehearing shall have been granted or is pending, or unless otherwise ordered by this Court, and that the record be remitted to the Superior Court—Law Division to be there proceeded with in accordance with the rules and practice relating to that court, consistent with the opinion of this Court.

Witness the Honorable JOSEPH WEINTRAUB, Chief Justice, at Trenton on the 15th day of March, 1965.

John H. Gildea, Clerk of the Supreme Court.

[File endorsement omittted]

[fol. 502]

IN THE SUPREME COURT OF NEW JERSEY

JAMES HOLROYD, EUGENE D. ELWELL and DONALD MURRAY, Appellants,

v.

STATE OF NEW JERSEY, Respondent.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed June 11, 1965

I

Notice is hereby given that James Holroyd, Eugene D. Elwell and Donald Murray, the appellants above named, hereby appeal to the Supreme Court of the United States from the final order of the Supreme Court of New Jersey affirming the judgments of conviction of said appellants, which order was entered herein on March 15, 1965.

This appeal is taken pursuant to Title 28 U. S. Code § 1257(2).

Appellants were convicted on a charge of conspiracy to obstruct the administration of the New Jersey Motor Vehicle Traffic Laws contrary to the provisions of N.J.S. 2A:98-1 and 2A:98-2 and were sentenced to three (3) months in the county jail, which sentence was suspended on the condition that One Hundred Dollars ($100.00) fine be paid. Appellants are presently enlarged on bail and are not now in custody.

II

The clerk will please prepare a transcript of the record [fol. 503] in this cause, for transmission to the clerk of the Supreme Court of the United States, and include in said transcript the following:

A. Joint Appendix, Volumes I and II, filed in these proceedings.

B. Decision of the Supreme Court of New Jersey entered March 15, 1965 in this cause.

C. This notice of appeal.

III

The following questions are presented by this appeal:

1. Is it repugnant to the U. S. Constitution for the highest court of New Jersey, by its own order, to undertake an investigation of an alleged law violation; to act as prosecutor of said law violation; to supply the principal witnesses for the trial; and then, as the tribunal of last resort within the state, review the appeal of convicted defendants who were subjects of the original court-initiated investigation?

2. Does a New Jersey State Statute violate the 14th Amendment when said statute requires holders of public office to give testimony about matters relating to their office and incriminate themselves where, if the office holders refuse to testify, they thereby automatically forfeit their office and pension rights and thereafter are permanently ineligible for election or appointment to any public office in the state?

3. Does the 14th Amendment prohibit the admission in [fol. 504] evidence during a criminal trial of statements obtained under a state statute which compels a defendant police officer to make the statement or be discharged from his employment?

Samuel P. Orlando, Attorney for Appellants, 1007 Wilson Building, Camden 2, New Jersey 08102.

Proof of Service (omitted in printing).

[fol. 505] [File endorsement omitted]

[fol. 506] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 507]

SUPREME COURT OF THE UNITED STATES

No. 386, October Term, 1965

EDWARD J. GARRITY, et al., Appellants,

v.

NEW JERSEY

ORDER POSTPONING JURISDICTION—March 21, 1966

Appeal from the Supreme Court of the State of New Jersey.

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits. The case is placed on the summary calendar.

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Supreme Court, U.S.
FILED
JUL 22 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. [redacted] 19

EDWARD J. GARGUILO AND EDWARD VIRTUE, *Appellants*,

v.

STATE OF NEW JERSEY, *Appellee*.

JAMES HOSMER, EUGENE D. ELDRIDGE AND DONALD MURRAY, *Appellants*,

v.

STATE OF NEW JERSEY, *Appellee*.

[redacted]

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. ———

EDWARD J. GARRITY AND EDWARD VIRTUE, *Appellants,*

v.

STATE OF NEW JERSEY, *Appellee.*

JAMES HOLROYD, EUGENE D. ELWELL AND DONALD MURRAY, *Appellants,*

v.

STATE OF NEW JERSEY, *Appellee.*

Appeal from the Supreme Court of New Jersey

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the Supreme Court of New Jersey is reported at 44 N.J. 209, 207 A. 2d 689, and is reprinted herein as Appendix "A". The opinion in the

case of *State* v. *Holroyd*[1] is reported at 44 N.J. 259, 208 A. 2d 146, and is reprinted herein as Appendix "B".

JURISDICTIONAL GROUNDS

The New Jersey Legislature enacted in 1953 *N.J.S.A.* 2A:81-17.1 which provides:

> "Any person holding . . . employment (whether State, county or municipal), who refuses to testify upon matters relating to the . . . employment . . . upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself . . . shall . . . be removed therefrom or shall thereby forfeit his . . . employment and any . . . pension granted to him by any law of this State . . ."

Acting pursuant to this compulsory statute, an Assistant Attorney General of New Jersey demanded and received from appellants statements which were thereafter admitted into evidence during their trial. At the trial, and on appeal, defense counsel vigorously objected to the admission of any statements obtained under the coercive threat of this statute and challenged the constitutionality thereof.

Appellants, therefore, appeal from the final judgment of the Supreme Court of New Jersey which affirmed the trial court conviction by:

1. Avoiding the issue raised by defense counsel challenging the constitutional validity of state statute *N.J.S.A.* 2A:81-17.1; and,

---

[1] The case of *State* v. *Holroyd* involves identical factual issues and questions of law. A Notice of Appeal to the United States Supreme Court was filed in the Supreme Court of New Jersey on June 11, 1965 and the record therein has been certified and filed in this Court. A consolidation of these two cases has been effected in order for the Court to simultaneously consider both appeals.

2. Sustaining the admission into evidence during trial, and over defense objection, statements obtained from defendants by this statutory coercion and gross misrepresentation of a material fact.

There is also the very substantial constitutional issue of whether the Supreme Court of New Jersey can engage in a non-judicial act; then, on appeal by convicted defendants, review its own non-judicial action. This question is first raised by this appeal because of the futility of raising such an issue in the courts below.

The question arises out of an order of the Supreme Court of New Jersey when, on June 30, 1961, it ordered the Attorney General of New Jersey to investigate alleged irregularities in the Municipal Court of the Borough of Bellmawr, Camden County, New Jersey. As a result of the court ordered investigation, appellants were indicted, tried and convicted of *conspiracy* to obstruct the administration of the New Jersey Motor Vehicle Traffic Laws.

An appeal was taken to the Appellate Division of the Superior Court of New Jersey. However, while this appeal was pending, and before argument, the Supreme Court of New Jersey, on its own motion, certified the case to its jurisdiction. The judgments of conviction, based upon the court-sponsored investigation, were then affirmed.

The judgment below for each appellant was entered September 26, 1963. Notice of Appeal to the Appellate Division of the Superior Court was filed October 23, 1963. The decision of the Supreme Court of New Jersey was rendered March 1, 1965.

This Court has jurisdiction pursuant to Title 28 USCA § 1257 (2).

The following cases sustain the jurisdiction of the Supreme Court in this appeal. *Dahke-Walker Milling Co.* v. *Bondurat,* 257 U.S. 282, *Slochower* v. *Board of Education,* 350 U.S. 551.

STATUTE INVOLVED

Official citation: Session Law 1953, Chapter 259, Page 1759, and cited as New Jersey Statutes Annotated (*N.J.S.A.*) 2A:81-17.1:

> "Any person holding or who has held any elective or appointive public office, position or employment (whether State, county or municipal), who refuses to testify upon matters relating to the office, position or employment in any criminal proceedings wherein he is a defendant or is called as a witness on behalf of the prosecution, upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself or refuses to waive immunity when called by a grand jury to testify thereon or who willfully refuses or fails to appear before any court, commission or body of this State which has the right to inquire under oath upon matters relating to the office, position or employment of such person or who, having been sworn, refuses to testify or to answer any material question upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself, shall, if holding elective or public office, position or employment, be removed therefrom or shall thereby forfeit his office, position or employment and any vested or future right or tenure or pension granted to him by any law of this State provided the inquiry relates to a matter which occurred or arose within the preceding five years. Any person so forfeiting his office, position or employment shall not thereafter be eligible for

election or appointment to any public office, position or employment in the State."

QUESTIONS PRESENTED

The questions presented are:

1. (a) Does *N.J.S.A.* 2A:81-17.1 violate the 14th Amendment when said statute compels holders of public office to give testimony about matters relating to their office where, if the office holders refuse to testify on the grounds of possible self-incrimination, they forfeit their office and pension rights and thereafter are permanently ineligible for election or appointment to any public office in the state?

(b) Does the 14th Amendment prohibit the admission in evidence during a criminal trial of statements obtained under *N.J.S.A.* 2A:81-17.1 which compels a defendant police officer to make the statement or be discharged from his employment?

2. Is it repugnant to constitutional guarantees of due process for the highest court of New Jersey, of its own motion, to order an investigation of an alleged law violation; refer the results of said investigation for prosecution; and, then, as the tribunal of last resort within the state, review the appeal of convicted defendants who were subjects of the original court-initiated investigation?

STATEMENT OF THE CASE

Appellants and one other, Helen B. Naglee, were all public employees of the Borough of Bellmawr, Camden County, New Jersey. Mrs. Naglee is now deceased and, therefore, not a party to this appeal. Edward J. Garrity was the Chief of Police of Bellmawr and Edward Virtue was a police officer of Bellmawr. Naglee was a clerk of the Municipal Court

of Bellmawr. The Supreme Court of New Jersey, of its own motion, entered an order on June 30, 1961, directing the Attorney General to conduct an investigation of alleged "ticket fixing" in the Borough of Bellmawr. The actual order is not of record in these proceedings. During the course of the investigation, the Attorney General's office developed a number of traffic violation tickets issued by Officer Virtue which were subsequently down-graded to a lessor charge. The down-grading allegedly was done with the concurrence of one or more of the defendants who were then indicted on a charge of conspiracy to obstruct the administration of the New Jersey Motor Vehicle Traffic Laws.

Garrity has been Chief of Police for 10 years and on the Bellmawr police force for a total of 15 years. Virtue has been on the Bellmawr police force for 8 years. Naglee has been clerk of court for 13 years. All have long tenure of service and have accumulated retirement pensions.

The Attorney General's office, acting pursuant to the statute which makes mandatory the loss of position and forfeiture of pension rights from any state employee who refuses to answer questions or give testimony on the grounds that it might incriminate them, demanded and obtained statements from Naglee, Virtue and Garrity concerning the down-grading of the traffic tickets.

After an extended investigation, the Attorney General, on behalf of the Supreme Court, referred the investigative results to the County Prosecutor of Camden County, New Jersey, for presentation to a Grand Jury. Thereafter, the County Prosecutor, together

with representatives of the Attorney General, and again acting pursuant to the statute in question, demanded and obtained statements from Naglee, Virtue and Garrity concerning the down-grading of traffic tickets. A true bill was rendered by the Grand Jury charging each of the three with conspiracy to obstruct the due administration of the Motor Vehicle Traffic Laws.

During the trial, the prosecution offered, over the vigorous objections of defense counsel, the statements obtained from each of the alleged co-conspirators. The trial court rejected defense counsel's objections and ruled that the statements were voluntarily and freely given and admitted the statements into evidence.

Defendants were all found guilty as charged on May 13, 1963, and on September 26, 1963, received a suspended three month sentence in the county jail on the condition that a $100 fine be paid. The fine has been paid and the defendants are not in custody.

Following the conviction of guilty by the trial court, defendants, on October 23, 1963, filed a Notice of Appeal to the Appellate Division of the Superior Court of New Jersey from the judgment of conviction. While this appeal was pending and before argument, the Supreme Court of New Jersey certified the appeal to its jurisdiction for hearing. The opinion of the Supreme Court of New Jersey was entered March 1, 1965.

In the state proceedings, counsel for defendants vigorously questioned the constitutionality of the statute *N.J.S.A.* 2A:81-17.1. This issue was ignored by the New Jersey Supreme Court.

I

(a) Does N.J.S.A. 2A:81-17.1 Violate the 14th Amendment When Said Statute Compels Holders of Public Office to Give Testimony About Matters Relating to Their Office Where, If the Office Holders Refuse to Testify on the Grounds of Possible Self-Incrimination, They Forfeit Their Office and Pension Rights and Thereafter Are Permanently Ineligible for Election or Appointment to Any Public Office in the State?

(b) Does the 14th Amendment Prohibit the Admission in Evidence During a Criminal Trial of Statements Obtained Under N.J.S.A. 2A:81-17.1 Which Compels a Defendant Police Officer to Make the Statement or be Discharged From His Employment?

These questions raise the issues of whether the statute is arbitrary and discriminatory; whether the drastic sanction which it imposes is, in fact, a bill of attainder; whether the element of psychological coercion, coupled with a deliberate misstatement of consequences by an interrogator, renders inadmissable statements obtained from defendants.

Following the hearings conducted by the late Senator McCarthy early in the last decade, many State Legislatures and municipalities enacted statutes and ordinances which prohibited their employees from invoking the guarantee against self-incrimination under penalty of loss of job if they asserted the privilege. A number of cases involving these statutes and ordinances have reached this Court with the result that there are now a variety of opinions relating to the right of State employees to invoke the constitutional privilege against self-incrimination.

The New Jersey statute is similar to those enacted in other states as it imposes, without benefit of hearing or judicial trial, severe sanctions upon its public employees for invoking the privilege against self-incrimi-

nation. This statute requires that the employee *shall* be removed from office, *shall* forfeit his pension rights and *shall* be prohibited from thereafter seeking elective office if he fails to testify for the reason that answers to questions may be self-incriminating.

The Congress of the United States enacted Public Law 769, 68 Stat. 1142, 5 U.S.C.A. 740d, of which Section 2(a) is similar to the New Jersey and other state statutes. (Appendix C) The validity of the Federal Act was considered by the Court of Claims in the case of *Steinberg* v. *U. S.*, 143 Ct. Cl. 1, 163 F. Supp. 590, with the result that the case law emerging therefrom holds that any statute passed by a Legislature applicable to public employees which inflicts punishment without providing for a hearing or a judicial trial is, in fact, a bill of attainder, prohibited by Article I, Section 10 of the Constitution. Punishment in the *Steinberg* case was denial of an annuity without due process. In the present case, the punishment is denial of employment without due process. Also from *Steinberg* is derived the rule that no Legislature can enact a statute which makes an employee's silence an admission that he has not fulfilled his public duty or obligation. Any statute which adopts such a procedure is declared to be lacking in the requirements of due process.

This Court, through prior decisions, guarantees protection to public employees when a statute affecting them is patently arbitrary and discriminatory, *Wieman* v. *Updegraff*, 344 U.S. 183, 73 S. Ct. 215, 97 L. Ed. 216. Coupled with this is the recent decision of this Court which holds that State jurisdiction can no longer seek refuge in the fiction that the 5th Amendment guarantee against self-incrimination is not ap-

plicable to purely state matters, *Malloy* v. *Hogan,* 378 U.S. 1, 84 S. Ct. 1489, 12 L. Ed. 2d 653.

In *Cohen* v. *Hurley,* 366 U. S. 117, 81 S. Ct. 954, 6 L. Ed. 2d 56, subsequently over-ruled by *Malloy* v. *Hogan,* Justice Douglas, in his dissent, would place on the State the burden of proving guilt if one asserts the constitutional privilege against self-incrimination. To paraphrase the Justice's language, he would hold that a statute does not meet the requirements of due process when it uses an employee's silence to brand him as one who has not fulfilled his duty or obligation. To take away a man's employment after many years of public service, to take away his accumulated pension and to forbid him from forevermore holding public office imposes a penalty so severe as to be a criminal sanction.

The constitutionality of this statute was raised by appellants before the Supreme Court of New Jersey. Rather than meet the validity issue, the court avoided its consideration on the basis that, because defendants were police officers, they would have been required to testify irrespective of the statute. No consideration was given by the court to the third defendant, Helen B. Naglee, who was not a police officer. The fact that appellants were police officers is immaterial. They were State officials and holding public office. This statute applies to all holders of public office in the State of New Jersey regardless of whether they be elected, appointed or civil servants. It groups all together regardless of their level of employment or the nature of their responsibilities.

In *Slochower* v. *Board of Education,* 350 U. S. 551, 76 S. Ct. 637, 100 L. Ed. 692, this Court held that the privilege against self-incrimination would be reduced

to a hollow mockery if its exercise could be taken as equivalent to either a confession of guilt or a conclusive presumption of perjury. *N.J.S.A.* 2A:81-17.1, as written, prejudges the guilt of one exercising the privilege against self-incrimination. The New Jersey Legislature has grouped the innocent with the guilty and imposes punishment regardless of guilt or innocence. Such a law is an indiscriminate classification of the innocent with the guilt and, therefore, is an assertion of arbitrary power, *Wieman* v. *Updegraff, Slochower* v. *Board of Education, Steinberg* v. *U. S.*

From the foregoing, it logically follows that any statement obtained from a defendant under the threat of a statute which imposes punishment; which is arbitrary and discriminatory; which is totally lacking in due process, cannot be said to have been freely and voluntarily made by the defendant.

The Supreme Court of New Jersey, when it considered the question of voluntariness of defendants' statements and their admissibility, undertook to consider whether defendants' wills were so over-borne as to critically impair their capacity for self-determination. The court then proceeded to examine only the physical circumstances existing at the time defendants' statements were taken. It held the statements to be voluntarily made and, therefore, admissible. The court then concluded that all statements are, to a degree, "coerced confessions" for the reason that virtually all confessions are accompanied by some degree of coercion.

Rarely does a court have the opportunity to review statements obtained from defendant police officers for usually the police officer is the villain who has obtained a statement under questionable circumstances from

others suspected of committing a crime. In this case, no question is raised about physical circumstances surrounding the taking of defendants' statements. True, the statement-taking extended over many hours but there is no charge of physical violence or other run-of-the-mill coercive tactics.

This case presents issues unique to the question of obtaining statements from individuals who were the principal subjects of an investigation. There had been a prolonged investigation of defendants involving the down-grading of traffic tickets. Defendants were all public employees and subject to the provision of *N.J.S.A.* 2A:81-17.1 which compelled them to testify. If they refused on grounds that the answer may tend to incriminate them, removal from employment and forfeiture of pension rights is mandatory.

During the investigation defendants were required to give statements. Assistant Attorney General Riggs, in taking defendants' statements, warned them as follows:

> "* * * I want to advise you anything you say must be voluntary, of your own free will, without threats or coercion or promise, or reward and anything you do say may be used against you or any person in a subsequent criminal proceeding, or proceedings, in the courts of our state. You do have under our statutes, as you may know, a privilege to refuse to disclose any information which may tend to incriminate you. However, if you make such a disclosure, with knowledge of this right and without coercion, you thereby waive this right or privilege with regard to any phase of this investigation. *This right or privilege that you have is limited to the extent that you as a police officer once sworn and asked questions pertaining*

to your office and your conduct therein, if you refuse to answer, you may then be subject to a proceeding to have you removed from the department." (Emphasis supplied.)

The emphasized portion of the warning is a gross misrepresentation of the statutory effect of defendants' refusal to answer. The statutory requirement is not permissive but mandatory and, in the event defendants refused to answer, they would be discharged from their jobs rather than *may* be subject to a proceeding to have them removed from their jobs. Likewise, this statute does not permit a removal hearing or "proceeding" as misrepresented by Riggs.

A common tactic of interrogating officers when obtaining confessions is to misrepresent the consequences of a subject's refusal to testify. The misleading inducement held out by the Assistant Attorney General is, in itself, sufficient to void the statement and render it inadmissible. No statement induced by fraud, trickery, or misrepresentation is admissable.

This Court must acknowledge that strong psychological coercion is sufficient to make involuntary a statement obtained from a defendant. In varying degrees this Court has recognized that a distinction exists between actual physical violence, mere threats of violence and depriving a defendant of some necessity prior to obtaining a statement. In *Haynes* v. *Washington,* 373 U. S. 503, 83 S. Ct. 1336, 10 L. Ed. 2d 513, the act of not allowing a suspect to call his wife until he confessed was held sufficient to hold the confession inadmissible.

In the present case, the Court must consider the psychological factors which constitute the coercive

inducement to defendants to make statements. These were:

1. Defendants could not invoke the constitutional guarantee against self-incrimination for, if they did, they lost their jobs.
2. If the constitutional privilege is invoked they subject themselves to the inference of guilt.
3. For invoking the constitutional privilege a social stigma attaches and they lose the respect of the community.
4. There is a loss of economic security in that they are deprived of their positions and pension rights and their future employment opportunity is seriously curtailed.
5. Failure to answer is tantamount to conviction without a hearing.
6. Emotional stress will necessarily result from impairment of relationships with wife, children, relatives, neighbors, etc.

It is impossible to measure the psychological impact upon subjects or to decide its effect upon the mind of the subject. For this reason alone, any statement obtained under these circumstances must be considered involuntary.

The fact that there may be ample evidence of wrongdoing to convict defendants apart from the coerced confession, nevertheless, the admission in evidence, over objection, of the coerced confession violates the due process clause of the 14th Amendment and, therefore, voids the conviction, *Payne* v. *Arkansas,* 356 U. S. 560, 78 S. Ct. 844, 2 L. Ed. 2d 975.

Testimony obtained under a compulsive statute such as this cannot provide the origin for defendants' convictions. The State, after obtaining the testimony, is left with complete freedom to prosecute but it cannot use the statements obtained under the coercive statute. Instead, it must work up its own evidence against the defendant independent of the statements. It is the introduction of the defendants' statements during trial which is objectionable, not the fact that prosecution upon the subject matter of the testimony is allowed.

The statutory threat and its deliberate misrepresentation by the Assistant Attorney General are, therefore, sufficient to declare defendants' statements involuntary and not the product of their free will. The statute should be declared as violative of the 14th Amendment and defendants' convictions should be set aside.

II

Is It Repugnant to Constitutional Guarantees of Due Process for the Highest Court of New Jersey, of Its Own Motion, to Order An Investigation of An Alleged Law Violation; Refer the Results of Said Investigation for Prosecution; and, Then, as the Tribunal of Last Resort Within the State, Review the Appeal of Convicted Defendants Who Were Subjects of the Original Court-Initiated Investigation?

The basic issue in this question is whether any court which undertakes to act in a non-judicial capacity can, thereafter, review its own non-judicial act on appeal. This issue is considered so basic to our concept of justice and due process that it must be considered by the United States Supreme Court, even though the issue was not raised below.

Chief Justice Vanderbilt of the New Jersey Supreme Court, in *Massett Building Company* v. *Bennett*, 4 N.J. 53, 71 A.2d 327, reviews at length the many non-judicial

acts imposed upon the New Jersey judiciary by the State Legislature and recites the historical basis of the judiciary accepting from the Legislature the delegation of non-judiciary powers. This decision, however, recognizes and affirms the principle that judges and courts are not obliged to accept legislative grants of authority if such tasks interfere with the proper functioning of the court or involve the court in situations which might reflect on the court's reputation in the community for fairness, impartiality and independence. The question not considered in the *Massett* case is whether a judge or court which engages in a non-judicial act can thereafter review its own non-judicial act.

The factual situation existing preceeding the conviction of appellants and the procedure followed by the Supreme Court while defendants' appeal was pending demonstrates more than a routine interest in the outcome. On June 30, 1961, the Supreme Court of New Jersey issued an order directing an investigation of alleged irregularities in the Municipal Court of the Borough of Bellmawr, New Jersey. Pursuant to this order, an Assistant Attorney General of the State was assigned to investigate the altering of traffic tickets in the Borough of Bellmawr. Following this investigation, and presumably with the concurrence of the Supreme Court, the results of the investigation were referred to the Camden County Prosecutor for Grand Jury action.

The record does not contain the court's order for investigation; however, the language of the court in its opinion leaves no doubt that the investigation was under the auspices of the court and those conducting the in-

quiry were doing so as agents of the court. At page 692 of the Opinion, the Court says:

> "Deputy Attorney General Budd M. Riggs and Detective John F. Corbin of the New Jersey State Police Department, *who had been assigned pursuant to an order of this court* to investigate the altering of tickets in the Borough. . . ." (Emphasis added.)

And again at page 694 of the Opinion:

> "Assistant Attorney General Riggs, *as a result of an order issued by this court on June 30, 1961,* had begun an investigation of alleged irregularities of the Bellmawr Municipal Court . . ." (Emphasis added.)

The court's obvious interest in the outcome is clearly demonstrated by its subsequent action for, after appellants had perfected their appeal from the trial court to the Appellate Division of the Superior Court of New Jersey, the Supreme Court, acting on its own initiative, reached down for the case and by-passed the Appellate Division. In its own words, at page 691 of the Opinion. the court acknowledges this action in the following language:

> "We certified the matter on our own motion before argument in the Appellate Division."

A hypothetical parallel to what has happened would be if this Court decided that the Director of the Federal Bureau of Investigation was not properly discharging his responsibility and ordered an investigation of his conduct in office. The Attorney General, sharing the same belief and under the guise of the court's order, undertakes such an investigation and, thereafter, refers

the matter to the U. S. Attorney in Alabama for presentation of his findings to a Grand Jury which then returns an indictment. Could this Court, thereafter, in all fairness to the accused and under our constitutional system, review its own preconceived idea of wrongdoing?

Due process requires that every procedure in a matter of law must hold the balance nice, clear and true between the State and the accused and, if it does not, then there is a denial of due process, *Tumey* v. *Ohio,* 273 U. S. 510, 47 S. Ct. 437, 71 L. Ed. 749. This Court has also recognized the gross abuse which can result from the one man "judge-grand jury" as exemplified in the case of *In re Murchison,* 349 U.S. 133, 75 S. Ct. 623, 99 L. Ed. 942. In *Murchison,* Justice Black, speaking for the majority, stated:

> "It would be very strange if our system of law permitted a judge to act as a grand jury and then try the very person accused as the result of his investigation.
>
> "A single 'judge-grand jury' is even more a part of the accusatory process than an ordinary lay grand jury. Having been a part of that process, a judge cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused . . . Thus the judge whom due process requires to be impartial in weighing the evidence presented before him, called on his own personal knowledge and impressions of what had occurred in the grand jury room and his judgment was based in part on his impression, the accuracy of which could not be tested by adequate cross examination.
>
> "We hold that it was a violation of due process for the 'judge-grand jury' to try there petitioners . . ."

The issue thus raised by this question touches the very roots of the separation of powers in constitutional governments as established in the United States. The action of the Supreme Court of New Jersey offends the canons of deceny and fairness which we cherish. It acted as complainant, investigator, prosecutor and judge. Where then can defendants turn for help but to the Supreme Court of the United States? Under these circumstances, the Court should accept jurisdiction of this question.

CONCLUSION

Every public employee of the State of New Jersey is affected by the compulsory provisions of *N.J.S.A.* 2A:81-17.1. For this reason, it is respectfully submitted that the Court cannot escape the conclusion (1) that the questions presented are substantial, and (2) that the statute violates the due process guarantee of the 14th Amendment.

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APPENDIX A

SUPREME COURT OF NEW JERSEY

STATE OF NEW JERSEY, *Plaintiff-Respondent*,

v.

HELEN B. NAGLEE, EDWARD J. GARRITY, AND EDWARD VIRTUE, *Defendants-Appellants.*

No. A-43.

Argued Jan. 5, 1965.

Decided March 1, 1965.

* * * * * * * * * * *

PROCTOR, J.

The defendants, Helen Naglee, Edward J. Garrity, and Edward Virtue, were tried before a jury in Camden County and convicted for conspiracy to obstruct the due administration of the Motor Vehicle Traffic Laws.[1] After the trial judge denied their motion for a new trial, they appealed. We certified the matter on our own motion before argument in the Appellate Division.[2]

The indictment charged that between 1959 and June 29, 1961, Helen Naglee was the Violations Clerk and the Municipal Court Clerk, Edward J. Garrity was the Chief of Police,

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[1] N.J.S. 2A:98-1, N.J.S.A. provides:

"Any 2 or more persons who conspire:

* * * * *

h. To commit any act for the perversion or obstruction of justice or the due administration of the laws —

Are guilty of a conspiracy and each shall be punished * * * as for a misdemeanor."

[2] While the appeal was pending, Helen Naglee died. Her appeal will nevertheless be considered pursuant to R.R. 1:2-4(b). See City of Newark v. Pulverman, 12 N.J. 105, 95 A. 2d 889 (1953).

and Edward Virtue was a police officer, all in the Borough of Bellmawr. The indictment further charged that between those dates the defendants had agreed to dispose of eight drunken driving cases (N.J.S.A. 39:4-50) by altering to a lesser charge the tickets issued by the defendant Virtue; that in furtherance of the conspiracy entries were made in the municipal court dockets showing that the traffic offenders appeared in open court and were fined by the magistrate, when in fact no hearings were held. It was further alleged that Chief Garrity required some of the offenders to post bail and then arbitrarily fixed the fines; in some instances Chief Garrity diverted the difference between the amount of the bail and the amount of the fines to unauthorized uses.

The State in its case in chief offered in evidence several traffic tickets issued by the defendant Virtue. One of these had been altered from drunken driving to improper passing, and the others from drunken driving to careless driving. The State also introduced receipts given to the offenders signed by Helen Naglee or Chief Garrity. Several of the receipts indicated that the traffic offender had also been fined for disorderly conduct. The municipal magistrate testified that his purported signature on several of the traffic tickets was a forgery. Eight alleged traffic offenders testified that they were originally charged by Virtue with drunken driving, that they had paid a fine for offenses other than drunken driving, but that they had never appeared before the municipal magistrate. Several testified that they had posted cash bail for their appearance, and after talking to Virtue and Garrity, had paid Garrity a "fine" for careless driving and a "fine" for disorderly conduct. In several instances where the amount of the bail posted was greater than the fine assessed, the difference was not returned to the traffic offender.

Dr. Cooperman testified that he had examined, on behalf of the borough, several of the alleged offenders for intoxica-

tion; that he had made records of his findings and turned them over to the police department, but he had not retained written copies and could not recall the results of the tests. Deputy Attorney General Budd M. Rigg and Detective John F. Corbin of the New Jersey State Police Department, who had been assigned pursuant to an order of this court, to investigate the altering of tickets in the borough, both testified that Chief Garrity had told them that he had disposed of Dr. Cooperman's medical reports because the tickets had been downgraded.

The State introduced in evidence two statements made by each defendant. The first statement was given to Deputy Attorney General Rigg on November 10, 1961, and the second was given to Camden County Assistant Prosecutor Sidney Kaplan in December 1962.

Defendant Virtue in his statement of November 10, 1961 to Mr. Rigg, admitted that he had participated in the practice of altering tickets. Defendant Naglee in her statement to Mr. Rigg admitted that she had altered tickets at Chief Garrity's request and that she had made notations indicating that the alleged traffic offenders had appeared in court, had pleaded guilty and were fined by the magistrate, when in fact they had never appeared. She also admitted that she had signed the magistrate's signature on several traffic tickets. In his statement to Mr. Rigg, Chief Garrity said that no tickets could be altered without his consent. With reference to one alleged offender who had posted bail of $225, Garrity said that he had come to an understanding with the offender, that the offender could pay a total fine of $140 and not appear in court; that the $85 balance was placed in an envelope and kept in a safe in the police station.

In defendant Virtue's statement to Mr. Kaplan, he admitted that one of the eight alleged traffic offenders was examined and found to be under the influence of alcohol, but the charge had been downgraded to careless driving because a hardship was involved. He also admitted that the

change on the face of another of the eight tickets was in his handwriting and that he had consented to a change in a third case. Mrs. Naglee, in her statement to Mr. Kaplan, stated that she had made the changes in the cases of five of the eight alleged traffic offenders. She admitted signing the magistrate's name below an entry which indicated a court hearing, a plea of guilty and the imposition of a fine in two cases. She stated that where tickets were altered, the arrested person, if he had a hardship, would go to the arresting officer and that the officer would refer the case to Chief Garrity. Garrity, in his statement to Mr. Kaplan, stated that before he would direct Mrs. Naglee to alter a ticket he would obtain the arresting officer's consent. He admitted changing a number of drunken driving charges to careless driving and disorderly conduct.

All of the defendants testified in their own defense. All said that they did not receive any money for their personal gain.

Helen Naglee testified there was no express agreement between Garrity, Virtue and herself to alter tickets. However, she admitted that she had altered tickets at Chief Garrity's request. She said that she did not know it was wrong to alter the tickets although she did know persons charged with disorderly conduct were supposed to appear in court. She said that the excess money paid by the alleged traffic offenders was kept in a locked drawer in her desk.

Defendant Virtue testified that there was no agreement between Garrity, Naglee and himself to alter tickets. However, he admitted that one of the eight cases had been altered because of hardship. He also admitted downgrading another ticket because it was a "borderline case." In the other cases the doctor's examination had revealed insufficient intoxication to press the charge, and therefore the charge was altered. He said that the tickets for drunken driving were given on the highway and that the alterations took place after the doctor's examination. He said that he

had destroyed the drunkometer reports with Chief Garrity's consent because they did not show legal intoxication.

Garrity, like Virtue and Mrs. Naglee, testified that he had not conspired to alter any tickets. He said that in six of the eight cases the tickets were altered after conferring with Virtue because intoxication could not be proved. In four of the cases he stated that the alleged traffic violators had made donations to the police fund for equipment of the difference between the balance they had originally paid and the fine eventually imposed. Chief Garrity admitted that he had instructed Mrs. Naglee to make entires in the court dockets to show that six of the offenders had appeared in court, when actually none of them had appeared.

In rebuttal, the State called five of the alleged traffic offenders who all testified, in contradiction to the defendant Virtue's testimony, that the tickets were issued in police headquarters and not on the highway. Two of these witnesses also testified, in contradiction to Chief Garrity's testimony, that they did not indicate to him that they were making donations for police equipment.

On this appeal, the defendants Garrity and Virtue contend that their statements, taken by Deputy Attorney General Rigg and Assistant Prosecutor Kaplan, were erroneously introduced into evidence because they were involuntary. They contend that their statements were coerced by Mr. Rigg's threat that if they failed to give a statement, they would lose their positions with the police department.

Before Mr. Rigg took the statement of Virtue, he advised him:

> " • • • I want to advise you anything you say must be voluntary, of your own free will, without threats or coercion or promise, or reward and anything you do say may be used against you or any person in a subsequent criminal proceeding, or proceedings, in the courts of our state. You do have under our statutes, as you

may know, a privilege to refuse to disclose any information which may tend to incriminate you. However, if you make such a disclosure, with knowledge of this right and without coercion, you thereby waive this right or privilege with regard to any phase of this investigation. *This right or privilege that you have is limited to the extent that you as a police officer once sworn and asked questions pertaining to your office and your conduct therein, if you refuse to answer, you may then be subject to a proceeding to have you removed from the department.*" (Emphasis supplied.)

A similar preliminary statement was given to the defendant Garrity. The preliminary statement given by Mr. Rigg to Mrs. Naglee did not contain the emphasized warning quoted above.

Historically, the initial reason for excluding an involuntary confession was the fear it was untrue. But a second reason not at all inconsistent with the first, but which may operate independently of the risk of untruthfulness is the desire to enforce decently restrained behavior by police officers. See Rogers v. Richmond, 365 U.S. 534, 541, 81 S.Ct. 735, 5 L.Ed.2d 760, 766-67 (1961), where the court stated that the constitutional exclusion of involuntary confessions rests not upon their probable untruth but rather upon the unconscionable methods used. See also Maguire, Evidence of Guilt, 109 (1959). Thus, in determining whether a confession is involuntary courts have considered not only the degree and extent of the compulsion used to make the declarant confess, but also whether the nature of the interrogation was fair. Of course, an involuntary confession is inadmissible. The test for determining involuntariness is whether the defendant's will was overborne and his capacity for self-determination critically impaired. Culombe v. Connecticut, 367 U.S. 568, 602, 81 S.Ct. 1860, 6 L.Ed.2d 1037, 1057-1058 (1961); State v. Wade, 40 N.J. 27, 35, 190 A.2d 657 (1963). This test implies that some coercion may exist when a statement is taken without being of sufficient

strength to overbear the will of the declarant. As a matter of common knowledge every official interrogation, no matter how civilly conducted, by its very nature tends to compel the person questioned to answer. Thus, the term "coerced confession" in a sense is a misnomer since virtually all confessions are accompanied by some degree of coercion.[3] Therefore, an appellate court must examine the entire record to determine not merely whether coercive pressures were present, but whether under the totality of the circumstances they were of an offensive nature and were sufficient in degree to render the declarant incapable of freely exercising his will.

Before the defendants' statements were introduced in evidence, the trial court held a preliminary hearing in the absence of the jury to determine the voluntariness of the statements. The State's evidence showed that the statements of the defendants were given under the following circumstances: Assistant Attorney General Rigg, as a result of an order issued by this court on June 30, 1961, had begun an investigation of alleged irregularities in the Bellmawr Municipal Court. After a long preliminary investigation, during which he had talked to Chief Garrity on several occasions, he had scheduled the taking of statements from the defendants during the last week of October, but he postponed the interrogations until November 10, 1961. The defendants were interrogated in a room in the firehouse which was adjacent to the police station in Bellmawr.

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[3] As Justice Hall said in State v. Smith, 32 N.J. 501, 550, 161 A. 2d 520, 546 (1960), cert. denied 364 U.S. 936, 81 S. Ct. 383, 5 L. Ed. 2d 367 (1961):

> "An interrogation, no matter how conscientiously conducted, is naturally bound to be a tense occasion and to evoke apprehension, nervousness and a sense of pressure, no matter what the situation, which will be heightened in a person who knows he is guilty by consciousness of guilt and fear of the legal penalty. It must be recognized that it is not this kind of normal stress, fear and pressure which can make the questioning unfair and a confession involuntary."

Chief Garrity had made arrangements for Mr. Rigg to use this room for the interrogations. The statements were taken during the day and there is no evidence to indicate that the defendants were questioned or detained for any period of time before the actual statements were taken. Nor is there any evidence that the defendants were reluctant to give the statements. Mr. Rigg testified that as he and Chief Garrity were walking to the firehouse, Garrity told him that he had arranged for counsel but that he did not think counsel would be necessary at that point. Mr. Rigg and Lawrence Garifo, the court stenographer who took the defendants statements, both testified that although the defendants were nervous at times, nothing unusual occurred during the interrogations.

Although the defendants at the preliminary hearing had full oportunity to testify concerning the voluntariness of their statements, none took the stand. There is therefore no evidence that their statements were in fact coerced by the preliminary statement made by Mr. Rigg. There is nothing in the record inconsistent with the conclusion that each defendant came to the fire hall with the intention of making a statement. Nor is there anything to suggest that the interrogation was not conducted in a polite and civil manner with due consideration for the defendants' comfort. The record lacks all of the elements of coercive tactics which were present in prior cases holding confessions to be involuntary. Here there is no physical coercion, no overbearing tactics of psychological persuasion, no lengthy incommunicado detention, or efforts to humiliate or ridicule the defendants. The overt circumstances show that the interrogation was conducted with a high degree of civility and restraint. We are convinced that the State sustained its burden of proving that the degree of coercion exerted upon the defendants could not have been sufficient to overbear their wills.

Defendants contend that Mr. Rigg's "threat" constituted a type of coercion which he was not entitled to assert. They

urge that the Deputy Attorney General was alluding to N.J.S. 2A:81-17.1,N.J.S.A.[4] However, he neither referred to the statute by name nor quoted from it. He merely said, "This right or privilege [of refusing to answer on the ground of self-incrimination] that you have is limited to the extent that you as a police officer once sworn and asked questions pertaining to your office and your conduct therein, if you refuse to answer, you may then be subject to a proceeding to have you removed from the department."

As policemen, Garrity and Virtue held sensitive positions in regard to reporting and prosecuting violations of the law. Surely, a police officer who refuses to cooperate in a proper investigation of his official conduct is acting inconsistently with his police duties. He is therefore prop-

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[4] N.J.S. 2A:81-17.1, N.J.S.A., provides:

"Any person holding or who has held any elective or appointive public office, position or employment (whether State, county or municipal), who refuses to testify upon matters relating to the office, position or employment in any criminal proceeding wherein he is a defendant or is called as a witness on behalf of the prosecution, upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself or refuses to waive immunity when called by a grand jury to testify thereon or who willfully refuses or fails to appear before any court, commission or body of this State which has the right to inquire under oath upon matters relating to the office, position or employment of such person or who, having been sworn, refuses to testify or to answer any material question upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself, shall, if holding elective or public office, position or employment, be removed therefrom or shall thereby forfeit his office, position or employment any any vested or future right of tenure or pension granted to him by any law of this State provided the inquiry relates to a matter which occurred or arose within the preceding five years. Any person so forfeiting his office, position or employment shall not thereafter be eligible for election or appointment to any public office, position or employment in this State."

erly subject to subsequent dismissal proceedings. Fallon v. New Orleans Police Department, 238 La. 531, 115 So. 2d 844 (Supp.Ct. 1959); Fichera v. State Personnel Board, 217 Cal.App.2d 613, 32 Cal. Rptr. 159, 163 (D.Ct.App.1963); see also Canteline v. McClellan, 282 N.Y. 166, 25 N.E.2d 972 (Ct.App. 1940); Souder v. Philadelphia, 305 Pa. 1, 156 A. 245, 77 A.L.R. 610 (Sup. Ct. 1931); Scholl v. Bell, 125 Ky. 750, 102 S.W. 248 (Ct.App. 1907). The obligation to cooperate does not depend on the existence of a statute or rule. It is intrinsic to the position of a police officer. Christal v. Police Comm. of San Francisco, 33 Cal.App. 2d 564, 92 P.2d 416 (Sup.Ct. 1939). See also Drury v. Hurley, 339 Ill.App. 33, 88 N.E.2d 728 (Sup.Ct. 1949); and In re Emmons, 63 N.J.Super. 136, 164 A.2d 184 (App.Div. 1960). It is to be noted that the above cases recognize the right of a policeman to assert his privilege against self-incrimination; but he may be discharged for doing so. A subsequent discharge is not predicated upon an inference of guilt from the police officer's refusal to testify, but upon his failure to cooperate in a situation where his duty compels cooperation. See the discussion in Ratner, "Consequences of Exercising the Privilege Against Self-Incrimination," 24 U.Chi.L.Rev. 472, 503-4 (1957).

We therefore conclude that Mr. Rigg's warning to Garrity and Virtue that their refusal to answer his questions might subject them to removal proceedings was a type of compulsion which may be legitimately used.

Defendants contend that their subsequent statements taken by Mr. Kaplan were involuntary and hence inadmissible. They argue that even though Mr. Kaplan made no suggestion that they might lose their jobs, Mr. Rigg's "threat" controlled the character of their later statements and rendered them inadmissible. Since we have concluded that Mr. Rigg's so-called threat did not make the statements given to him involuntary, it follows that the "threat" could not make the statements given to Mr. Kaplan involuntary.

Defendants also allege in their brief that additional coercive pressures were exerted upon them during Mr. Kaplans' interrogation. Our examination of the record shows this allegation to be without substance.

The defendants further contend that their statements were involuntary because neither Mr. Rigg nor Mr. Kaplan advised them of their right to counsel. While failure to advise a suspect of his right to counsel is an element to be considered on the issue of voluntariness of an inculpatory statement, the weight to be given this factor depends upon the circumstances of the interrogation. Unlike most suspects, the defendants here were intimately associated with law enforcement and it would be unreasonable to assume that they were not aware of their rights in this situation. There is no suggestion that had the defendants asked that their counsel be present, such request would have been denied. Indeed, Chief Garrity prior to the interrogation told Mr. Rigg that he had arranged for counsel but that he had decided that counsel's presence at that point would be unnecessary. The defendants do not claim that the trial judge did not consider the interrogator's failure to warn them of their right to counsel. We therefore conclude that in the circumstances of these interrogations the failure to advise the defendants did not render their statements involuntary.

The defendants rely upon Escobedo v. State of Illinois, 378 U.S. 478, 84 S.Ct. 1758, 12 L.Ed.2d 977 (1964), decided since their trial. That case is a far cry from the situation before us. There the suspect was accused of murder. He was taken into custody and grilled at the police station. He refused for several hours to give the police his statement and it was only after a denial by the police of his repeated requests to see his lawyer, and his lawyer's repeated requests to see him, that he confessed. In that case the denial of counsel could have been a significant factor in producing the defendant's confession. But under the circum-

stances of the present case which we have outlined above, we conclude that the absence of advice to these defendants was not a significant factor in obtaining their statements.

We hold the trial judge was correct in his determination that the statements given by the defendants were admissible.

The defendants further contend that N.J.S. 2A:81-17.1, N.J.S.A., is unconstitutional. As we have mentioned earlier in this opinion, Mr. Rigg did not expressly threaten to invoke the sanction of the statute against the defendants Garrity and Virtue. The warning he gave them was to the effect that if they did not cooperate in the investigation they might be subject to dismissal as a result of a subsequent proceeding. We determined that such a dismissal would be proper even in the absence of a statute. Therefore, we conclude that the defendants, in the circumstances of this case, are not in a position to challenge the constitutionality of the statute.

The defendants in their brief have made a point which we have not previously discussed. They contend that a public official may not be subjected to a penalty (here the loss of employment) because of the exercise of a legal right (here the constitutional right to refuse to answer questions on the ground that the answers would be self-incriminatory). But there are situations where a public official's right to retain his position may properly depend upon a willingness to forego a constitutional right to the extent that the exercise of such a right may be inconsistent with the performance of the duties of his position. For example, a member of the judiciary of this State cannot engage in partisan political activity.

The question is not whether the State can require an employee to forego the exercise of the constitutional right. Of course it cannot. The question is whether the State's requirement that a given employee forego a given constitutional right as a condition of continued employment is *reasonable.* We need not now determine whether it would be

reasonable for the State, under other circumstances, to dismiss employees holding other public positions because they refuse to answer questions on the ground of self-incrimination. See Ratner, supra, at pp. 504-511. We think it reasonable, however, for the State, in a proper proceeding, to dismiss a police officer for refusal to answer questions pertaining to his official position in an investigation such as the one conducted here.

The defendants next contend that the failure of the State to introduce evidence before the jury on the issue of the voluntariness of their statements was plain error. See R.R. 1:5-1(a). It is settled in this State that when the State seeks to introduce the out-of-court statement of a defendant in a criminal trial the trial judge must make his own finding upon the issue of voluntariness; and if he finds the statement to be voluntary and hence admissible, he must instruct the jury to consider the same issue and to disregard the statement unless it finds the State has proved the statement was voluntarily obtained. State v. LaPierre, 39 N.J. 156, 162-163, 188 A.2d 10 cert. denied Bisignano v. New Jersey, 374 U.S. 852, 83 S.Ct. 1920, 10 L.Ed.2d 1073 (1963).

When the State sought to introduce the defendants' statements in evidence, the jury was excused and the court conducted a hearing to determine their admissibility. The court initially considered the voluntariness of the statements. The State produced several witnesses who testified to the manner in which the statements were taken. The defendants offered no contradictory testimony. The court held that the statements were voluntary. The court then considered whether certain parts of the statements should be deleted as irrelevant. After a lengthy discussion with counsel, numerous deletions were made. The court then proposed that the stenographer, who had transcribed the statements, read them as deleted to the jury. Both counsel for the State and the defendants acquiesced, and the statements were then read to the jury. The State did

not repeat the testimony as to the manner in which the statements were taken and the defendants again offered no testimony on the issue of voluntariness. When the statements were read to the jury, the defendants made no objection on the ground that the State had offered no evidence of voluntariness for the jury's consideration. The trial court did not mention the question of voluntariness in its charge, and the defendants again did not object. Further, on their motion for a new trial defendants did not raise the issue.

The State contends that its failure to present evidence to the jury on the issue of voluntariness is attributable to an understanding among the trial court, the prosecutor and defense counsel that the State need not present such evidence. At oral argument we directed that this matter be returned to the trial court for clarification. At the hearing conducted by the trial court, the respective recollections of the judge, the prosecutor and defense counsel were somewhat at variance. The judge had not refreshed his recollection by examining the trial record. On our examination of the transcript of this hearing and of the original trial record, we are satisfied that there was at least an implicit agreement that the State need not produce witnesses before the jury on the voluntariness of the statements. It is clear that the defendants were not urging involuntariness in the traditional sense, but rather only the narrow legal issue which we have previously discussed. There was therefore no reason for the trial court to charge the jury on that issue. In any event, it cannot be said in the circumstances of this case that the omission was prejudicial error since in our opinion the jury as reasonable men could not have found the statements to have been involuntary. See State v. Smith, 32 N.J. 501, 560, 161 A.2d 520 (1960), cert. denied 364 U.S. 936, 81 S.Ct. 383, 5 L.Ed. 2d 367 (1961). *A fortiori,* the omission was not plain error, as it could not have had the clear capacity to bring about an unjust result. State v. Corby, 28 N.J. 106, 108, 145 A.2d 289 (1958).

The defendants further contend that the acts alleged in the indictment do not constitute the crime charged. They argue that the acts alleged constitute contempt of court under R.R. 8:10-2, and therefore cannot be the crime of conspiracy to obstruct justice under N.J.S. 2A:98-1(h), N.J.S.A. This point is clearly without merit. This court in the exercise of its rule-making power cannot deprive the Legislature of its right to determine the type of conduct which constitutes a substantive crime.

Finally, the defendants contend that their motions for judgments of acquittal at the end of the State's case and at the end of the entire case should have been granted, and that the verdict was contrary to the weight of the evidence. The State, in its case in chief presented ample evidence, including the statements we have found admissible, from which the jury could properly conclude that the defendants were guilty of the crime charged. The evidence introduced in behalf of the defendants did not refute the State's evidence; indeed, except for a denial of an express agreement, their testimony corroborated the State's proof. The jury could properly find each defendant was acting in agreement with the other defendants in downgrading tickets and falsifying court records. Participation in a criminal conspiracy need not be proved by direct evidence; a common purpose and plan may be inferred from a development and a collocation of circumstances. Glasser v. United States, 315 U.S. 60, 80, 62 S. Ct. 457, 86 L.Ed. 680, 704 (1942).

The judgments of conviction are affirmed.

For affirmance: Chief Justice Weintraub and Justices Jacobs, Francis, Proctor, Hall, Schettino and Haneman—7.

For reversal: None.

APPENDIX B

SUPREME COURT OF NEW JERSEY

44 N.J. 259

STATE of New Jersey, *Plaintiff-Respondent,*

v.

James HOLROYD, Eugene D. Elwell and Donald Murray, *Defendants-Appellants.*

No. A-58.

Argued Jan. 5, 1965.

Decided March 15, 1965.

The defendants, James Holroyd, Eugene D. Elwell, and Donald Murray, were tried before a jury in Camden County and convicted for conspiracy to obstruct the due administration of the Motor Vehicle Traffic Laws. After the trial judge denied their motion for a new trial, they appealed. We certified the matter on our own motion before argument in the Appellate Division.

The indictment charged that between January 1, 1959 and June 29, 1961, the defendants as police officers of the Borough of Barrington unlawfully agreed to dispose of certain motor vehicle traffic offense cases by downgrading the tickets originally issued by the arresting officer from operating offenses (e.g., speeding) to standing offenses (e. g., illegal parking), and that in furtherance of such illegal agreement parts of "fines" paid by the traffic offenders were unlawfully diverted. The overt acts specifically set out in the indictment concerned a speeding ticket issued by the defendant Holroyd to one Robert Wright on September 15, 1959.

At the trial Wright testified that he had been given a speeding ticket on September 15, 1959, for driving 41 miles

per hour in a 25 mile per hour zone. On October 14, 1959 Wright left his copy of the ticket and a $15 check at the Borough Hall. On October 16, 1959 the check was deposited in the borough account. The magistrate of the borough's municipal court, when shown the Wright ticket, testified that it had been issued by defendant Holyroyd and identified a receipt for $5 for a parking violation, dated January 8, 1960, as having been issued by defendant Murray. The magistrate further testified that defendant Elwell was the violations clerk in 1959 and that defendant Murray was violations clerk during 1960. The functions of the violations clerk were to keep a record showing the disposition of all tickets issued, and to accept fines and give receipts.

The official documents of the borough were introduced in evidence. With regard to the Wright ticket, they showed: Wright had been issued a ticket for speeding on September 15, 1959, and the ticket had been visibly altered from speeding to illegal parking. An entry in the traffic docket, dated January 8, 1960, showed a plea of guilty to illegal parking by Wright and the imposition and collection of a $5 fine. The records did not indicate a receipt of the $15 Wright check, dated October 14, 1959, and the records did not account for the $10 difference between the $15 payment and the $5 receipt.

The State introduced in evidence two statements made by each defendant. The first statement was given to Deputy Attorney General Budd M. Rigg on November 2, 1961, and the second was given to Camden County Assistant Prosecutor Sidney Kaplan on September 28, 1962.

In his statements, Elwell admitted that he altered a number of tickets he had issued because of hardship on the violator or because of friendship or at the request of fellow police officers. He also said that in addition to his duties as a patrolman, he had served as violations clerk during the year 1959. As violations clerk, after a speeding

summons had been altered to parking, he would enter it in the docket book as a parking violation. He admitted endorsing the $15 Wright check but had no explanation for his failure to account for its receipt in the court's records. In his statements, Murray admitted altering tickets and consenting that tickets be altered because of hardship on the violators or friendship for them. In addition to his job as patrolman, he served as violations clerk for 1960. With reference to the Wright ticket, he acknowledged that as violations clerk he had received $5 for illegal parking and had made out a receipt accordingly. In his statements, Holroyd admitted that he had participated in the practice of altering tickets from speeding to illegal parking. He admitted that he had issued Wright's speeding ticket but could not recall whether he was the officer who had physically altered it. However, he stated that it was the practice that a ticket would not be altered without the issuing officer's consent.

All the defendants testified in their own behalf, and gave testimony generally consistent with that introduced through their statements.

On this appeal the defendants contend that the trial court erred in admitting their statements into evidence without holding a hearing to determine whether the statements were voluntarily made. Before the statements were introduced into evidence, the trial judge excused the jury and held a hearing to determine their admissibility. At that hearing the defendants objected to the admissibility of the statements on the ground that they had been coerced by Mr. Rigg's warning to them that if they failed to answer, procedings might be instituted against them to have them removed from the police department. No testimony was produced by either the State or the defendants as to the manner in which the statements were taken. The entire hearing was devoted to determining what parts of the various statements should be deleted as irrelevant to the case. Thereafter, the statements as deleted were read to

the jury by the court reporter who had taken and transcribed them. At the oral argument before us the State contended that its failure to introduce evidence to show the circumstances under which the statements were taken was due to an understanding among the parties and the court that since the defendants' sole objection was on the narrow legal ground that Mr. Rigg's warning, *per se*, made their statements involuntary, the State was not required to go through the formality of showing that the statements were not taken under otherwise coercive circumstances. We directed that this issue be returned to the trial court for clarification. At the subsequent hearing conducted by the trial court, the respective recollections of the judge, the prosecutor, and counsel who tried the defendants' case were in agreement that the State need not introduce evidence to show that the statements were not obtained as a result of physical or mental coercion; the defendants merely reserved their right to question the voluntariness of their statements on the narrow legal issue concerning Mr. Rigg's warning. Furthermore, during the hearing before the judge in the absence of the jury and during the remaining course of the trial, defense counsel did not object to the failure of the State to offer testimony relating to the taking of the statements, nor did they offer testimony themselves on this point. We therefore conclude that in the circumstances the State was not required to come forward with evidence of the voluntariness of the statements.

The defendants also argue that the failure of the State to produce evidence before the jury on the issue of voluntariness requires reversal. However, a reading of the transcript of the hearing on remand convinces us that the prosecutor, the court, and defense counsel understood that the State need not produce any evidence before the jury as to the manner in which the statements were taken.

Defendants next contend that since neither the State nor they produced any evidence before the jury on the issue of

the voluntariness of their statements, the trial court erred in instructing the jury on that issue. However, the defendants' statements, in question and answer form and including Mr. Rigg's warning, had been read to the jury. And defense counsel referred to Mr. Rigg's warning during their summations. Furthermore, no objection was made by defense counsel to the trial court's charge. Under these circumstances there is no merit to defendant's contention.

Defendants next contend that, as a matter of law, their statements were involuntary because of Mr. Rigg's warning that their failure to answer his questions might result in their losing their positions with the police department. This very issue was discussed at length in our recent opinion in State v. Naglee, 44 N.J. 209, —— A. 2d —— (1965). Since the circumstances in the present case are substantially similar to those in the Naglee case and the applicable legal principles are identical to those that governed that case, our holding there that those statements were voluntary is determinative of this issue in the present case. Indeed, the circumstances of the giving of the defendants' statements in the present case are even more persuasive of voluntariness than in Naglee. For here the defendants gave their statements to Mr. Rigg in the presence of their lawyer.

The defendants complain about certain portions of their statements being read to the jury. As we have already mentioned, the statements were taken in question and answer form. The defendants' objections are focused upon certain of the questions of the interrogators which assumed the defendants' guilt in a manner which the defendants contend was prejudicial. From our examination of these questions, and in view of the defendants' repeated admissions that they had participated in downgrading speeding tickets, we are satisfied that the possibility of prejudice to the defendants is far too remote to warrant reversal on this ground.

The defendants further contend that the acts alleged in the indictment do not constitute the crime of conspiracy under N.J.S. 2A:98-1(h), N.J.S.A. since they amounted to a contempt of court under R.R. 8:10-2. As we said in State v. Naglee, supra, this court in the exercise of its rule-making power cannot deprive the Legislature of its right to determine the type of conduct which constitutes a substantive crime.

Finally, the defendants contend that their motion for judgment of acquittal at the end of the State's case and at the end of the entire case should have been granted, and that the verdict was contrary to the weight of the evidence. From the facts that we have outlined earlier in this opinion, it is clear that these contentions are without merit.

Judgment affirmed.

For affirmance: Chief Justice WEINTRAUB and Justices JACOBS, FRANCIS, PROCTOR, HALL, SCHETTINO and HANEMAN —7.

For reversal: None.

APPENDIX C

Public Law 769, 68 Stat. 1142, § 2(a), 5 U.S.C.A. § 740d:

"There shall not be paid to any person who has failed or refused, or fails or refuses, prior to, on, or after the date of enactment of this Act, upon the ground of self-incrimination, to appear, testify, or produce any book, paper, record, or other document, with respect to his service as an officer or employee of the Government or with respect to any relationship which he has had or has with a foreign government, in any proceeding before a Federal grand jury, court of the United States or congressional committee, or to the survivor or beneficiary of such person,

for any period subsequent to the date of such failure or refusal of such person or the date of enactment of this Act, whichever is later, any annuity or retired pay on the basis of the service of such person as an officer or employee of the Government."

U. S. Constitution, Article 1, Section 10:

"No State shall . . . pass any Bill of Attainder . . ."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 13

EDWARD J. GARRITY, ET AL., *Appellants,*

v.

NEW JERSEY

Appeal from the Supreme Court of New Jersey

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OCTOBER TERM, 1966

No. 13

EDWARD J. GARRITY, ET AL., *Appellants,*

v.

NEW JERSEY

Appeal from the Supreme Court of New Jersey

BRIEF FOR APPELLANTS

The appellants herein are Edward J. Garrity, Edward Virtue, James Holroyd, Eugene D. Elwell and Donald Murray. They respectfully request that their judgments of conviction, as affirmed by the Supreme Court of New Jersey, be reversed.

These appellants were tried and convicted in two separate proceedings, which have been consolidated on the appeal to this Court. The first group of appellants

so tried was composed of Edward J. Garrity and Edward Virtue, along with Helen B. Naglee, now deceased.[1] The second group was composed of James Holroyd, Eugene D. Elwell and Donald Murray.[2] By stipulation in the Camden County Court, it was agreed by the State and by counsel for the second group that the legal arguments and contentions were identical to those raised in the other proceeding and that the only factual distinction related to the dates upon which statements had been taken of the respective appellants. 13(2)R. 531-532. The appeals from the judgments of conviction were subsequently argued on the same date before the Supreme Court of New Jersey. Separate opinions were rendered on different dates by that court in the two proceedings, but the court in the Holroyd-Elwell-Murray case relied almost exclusively upon its opinion in the Garrity-Virtue-Naglee case.

OPINIONS BELOW

The opinion of the Supreme Court of New Jersey in the Garrity-Virtue-Naglee case, known as *State of New Jersey* v. *Naglee, et al.*, was rendered on March 1, 1965, and is reported at 44 N.J. 209, 207 A. 2d 689. It appears in 13(1)R. 316.

The opinion of the Supreme Court of New Jersey in the Holroyd-Elwell-Murray case, known as *State of New Jersey* v. *Holroyd, et al.*, was rendered on March

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[1] The case was known in the Supreme Court of New Jersey as *State of New Jersey* v. *Naglee, et al.*, and the record in that proceeding is before this Court in Volume 1 of the printed record, referred to herein as 13(1)R. ——.

[2] The record of the Holroyd-Elwell-Murray case is before this Court in Volume 2 of the printed record, referred to herein as 13(2)R. ——.

15, 1965, and is reported at 44 N.J. 259, 208 A. 2d 146. It appears in 13(2)R. 553.

The unreported opinion of the Camden County Court, which reflected that court's denial of new trial motions in both cases, was rendered on June 21, 1963, and appears at 13(2)R. 533.

JURISDICTION

The opinion and judgment of the Supreme Court of New Jersey affirming the judgments of conviction of Edward J. Garrity and Edward Virtue were entered on March 1, 1965. The Notice of Appeal to this Court was filed on May 25, 1965. 13(1)R. 330. The Jurisdictional Statement was filed in this Court on July 22, 1965. On March 21, 1966, this Court entered an order postponing further consideration of the question of appeal jurisdiction to the hearing of the case on the merits. 383 U.S. 941.

The opinion and judgment of the Supreme Court of New Jersey affirming the judgments of conviction of James Holroyd, Eugene D. Elwell and Donald Murray were entered on March 15, 1965. 13(2)R. 559. The Notice of Appeal to this Court was filed on June 11, 1965. 13(2)R. 502. The Jurisdictional Statement, which encompassed both proceedings, was filed in this Court on July 22, 1965. And on March 21, 1966, this Court entered its order postponing consideration of the jurisdictional question as to the appeal. 383 U.S. 941.

The appeal jurisdiction of this Court has been invoked under 28 U.S.C. § 1257(2). Further discussion of the jurisdictional question, adverted to by this Court's order of March 21, 1966, is to be found in the portion of this Brief entitled The Question of Jurisdiction, pp. 19-23, *infra*.

QUESTIONS PRESENTED

The questions presented are:

1. (a) Does N.J.S.A. 2A:81-17.1 violate the 14th Amendment when said statute compels holders of public office to give testimony about matters relating to their office where, if the office holders refuse to testify on the grounds of possible self-incrimination, they forfeit their office and pension rights and thereafter are permanently ineligible for election or appointment to any public office in the state?

(b) Does the 14th Amendment prohibit the admission in evidence during a criminal trial of statements obtained under N.J.S.A. 2A:81-17.1, which compels a defendant police officer to make the statement or be discharged from his employment?

2. Is it repugnant to constitutional guarantees of due process for the highest court of New Jersey, of its own motion, to order an investigation of an alleged law violation; refer the results of said investigation for prosecution; and, then, as the tribunal of last resort within the state, review the appeal of convicted defendants who were subjects of the original court-initiated investigation?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment V:

> No person shall . . . be compelled in any criminal case to be a witness against himself . . .

United States Constitution, Amendment XIV, Section 1:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law;

nor deny to any person within its jurisdiction the equal protection of the laws.

New Jersey Session Law 1953, Chapter 259, Page 1759, and cited as New Jersey Statutes Annotated (N.J.S.A.) 2A:81-17.1.

Any person holding or who has held any elective or appointive public office, position or employment (whether State, county or municipal), who refuses to testify upon matters relating to the office, position or employment in any criminal proceedings wherein he is a defendant or is called as a witness on behalf of the prosecution, upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself or refuses to waive immunity when called by a grand jury to testify thereon or who willfully refuses or fails to appear before any court, commission or body of this State which has the right to inquire under oath upon matters relating to the office, position or employment of such person or who, having been sworn, refuses to testify or to answer any material question upon the ground that his answer against himself, shall, if holding elective or public office, position or employment, be removed therefrom or shall thereby forfeit his office, position or employment and any vested or future right or tenure or pension granted to him by any law of this State provided the inquiry relates to a matter which occurred or arose within the preceding five years. Any person so forfeiting his office, position or employment shall not thereafter be eligible for election or appointment to any public office, position or employment in the State.

STATEMENT OF THE CASE

Appellants Edward J. Garrity and Edward Virtue were police officers of the Borough of Bellmawr, New Jersey. Helen B. Naglee, a defendant below but now deceased, was the Violation Clerk and Court Clerk of the Municipal Court of the Borough of Bellmawr. Appellants James Holroyd, Eugene D. Elwell and Donald Murray were police officers of the Borough of Barrington, New Jersey. Each had served as Deputy Violation Clerk of the Municipal Court of the Borough of Barrington.

On June 30, 1961, the Supreme Court of New Jersey entered orders directing the Attorney General of the State of New Jersey to conduct investigations of alleged "ticket-fixing" in certain municipalities in Camden County, namely the Boroughs of Bellmawr and Barrington. Certified copies of these orders, and amendments thereto, have been filed with the Clerk of this Court and are reproduced in Appendix B hereto, p. 3a, *infra*. Under these orders of the Supreme Court, the Attorney General was authorized to issue subpoenas, require the attendance of witnesses and the production of documents, impound records, and conduct an *in camera* hearing before a master. The Supreme Court later amended its orders to direct that, instead of conducting a hearing before a master, the Attorney General prepare reports and file them with the Clerk of the Supreme Court. See Appendix B hereto, pp. 5a, 8a, *infra*.

Deputy Attorney General Budd M. Rigg, pursuant to said orders, was assigned to the investigations. During the course of the inquiry, Rigg developed the fact that in each borough a number of traffic-violation tickets had been down-graded to lesser charges. Fol-

lowing this development, Deputy Attorney General Rigg demanded and obtained sworn statements from all the appellants herein. These statements may be described as of an incriminating nature. The Deputy Attorney General prefaced the questions which elicited the statements with warnings as hereinafter quoted:

1. Warning Given to Edward J. Garrity (Read to Jury. 13(1) R. 108):

Q. Before I get started, because of the lateness of the hour and other commitments, I will undoubtedly have to question you again, as well as Mrs. Naglee and perhaps one or two of the officers.

I would just like to establish a few things here quickly now. Before I do, however, you I know are aware of the purpose of the investigation of your being here today. Before I ask you any questions concerning this investigation into the alleged irregularities of the handling of municipal traffic violations by your department, I want to advise you that anything you say must be said of your own free will and accord without any threats of promises or coercion, and anything you say may be, of course, used against you or any other person in any subsequent criminal proceedings in the courts of our State.

You do have under our laws, as you probably know, a privilege to refuse to make any disclosure which may tend to incriminate you. If you make a disclosure with knowledge of this right or privilege, voluntarily, you thereby waive that right or privilege in relation to any other questions which I might put to you relevant to such disclosure and this investigation.

This right or privilege which you have is somewhat limited to the extent that you as a police officer under the laws of our state may be subject to a proceeding to have you removed from office

if you refuse to answer a question put to you under oath pertaining to your office or your function within that office. It doesn't mean, however, you can't exercise the right. You do have the right. (Emphasis added).

A. No, I will cooperate.

Q. Understanding this, are you willing to proceed at this time and answer any questions?

A. Yes.

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2. Warning Given to Edward Virtue (Read to Jury. 13(1) R. 86):

Q. You are a Sergeant?

A. Detective.

Q. As you know by now, Detective, I am working under a Supreme Court order issued last June directing me to investigate certain irregularities in the handling of motor vehicle matters in the Municipal Court here in Bellmawr, together with various persons having any connection with the court, including the police department. That is why I scheduled this day, to ask you questions pertaining to this investigation.

Before I do, I want to advise you anything you say must be voluntary, of your own free will, without threats or coercion or promise or reward and anything you do say may be used against you or any person in a subsequent criminal proceeding or proceedings in the courts of our state.

You do have under our statutes, as you may know, a privilege to refuse to disclose any matters which may tend to incriminate you; however, if you make such a disclosure with knowledge of this right and without coercion, you thereby waive this right or privilege with regard to any phase of this investigation.

This right or privilege that you have is limited to the extent that you as a police officer when sworn and asked questions pertaining to your office and your conduct therein, if you refuse to answer, you then may be subject to a proceeding to have you removed from the department. (Emphasis added).

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3. Warning Given to Helen B. Naglee (Read to Jury, 13(1) R. 91):

Q. Mrs. Naglee, as you know I am working under a Supreme Court order dated this last June whereby or whereunder I am directed to conduct an investigation of certain irregularities in the handling of motor vehicle cases in the municipal court, and apparently the police department here in the Borough of Bellmawr, and it is pursuant to that order that I have asked you to answer some questions which I want to put to you.

Before you do, however, I want you to be fully aware of the fact that anything you say must be voluntary and of your own free will and accord without any threats, promises or reward or any coercion.

You do have a privilege to refuse to make any disclosure or give any answers which tend to incriminate you. Things that you tell me today may be used against you or any other person in a subsequent criminal proceeding. That is why you have that privilege under the law.

However, if you do answer a question and make a disclosure, by so doing you thereby waive this right or privilege that you have in relation to the entire investigation.

You understand that?

A. I do.

Q. And understanding that you are willing to proceed then?

A. Yes.

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4. Warning Given to James Holroyd (Read to Jury, 13(2) R. 358):

Q. All right, under a Supreme Court order dated the 20th of June, 1961, I have been directed to investigate irregularities in the handling of municipal court vehicle matters in the Borough of Barrington, and how they have been handled by the court, and local police departments. As a result, I have asked you to come in here today so that I may put questions to you.

A. Yes.

Q. I want you to realize fully, however, any answers you give must be voluntary, without any coercion, threat, or promise of reward, and those answers may be used against you or any other person. You have a privilege to refuse to disclose any matters which might tend to incriminate you, however, if you make such a disclosure you thereby waive your right or privilege in relation to any phase of this investigation in the future.

Under our laws, as a police officer, you are subject to a statute which provides however, if you exercise this right or privilege, a proceeding may be instituted against you to have you removed from office. (Emphasis added).

A. Yes.

Q. Knowing all of this, you are willing to proceed?

A. Yes.

5. Warning Given to Eugene D. Elwell (Read to Jury. 19(2) R. 352):

Q. Mr. Elwell, as you know, I have been directed by the Supreme Court order dated the 30th of June, 1961, to investigate irregularities in the handling of motor vehicle matters in the Municipal Court of Barrington, together with the conduct of all persons connected with this Court, and specifically the police department. It is for this reason I have asked you to be here today, so I could ask you certain questions pertaining to this investigation.

I want to advise you anything you say to me must of course be of your own free will and of course without any threats, coercion, or promise of reward I advise you further that you do have as every citizen has, under the laws of New Jersey, a privilege to refuse to disclose any matter which may tend to incriminate you, and further with full knowledge of this investigation, you thereby waive this right of privilege, in relation to any phase of this investigation, which might involve you.

This privilege is somewhat limited, under our laws, to the extent that a police officer who under oath during investigation, fails to testify or answer a specific question does thereby jeopardize his position on the force and may be removed under the proper proceedings. Understanding that, do you wish to proceed this morning and answer the questions which I intend to put to you? (Emphasis added).

A. I do, sir.

8. Warning Given to Donald Murray (Read to Jury, 13(2) R. 355-356):

Q. Mr. Murray, as you know, I am working a Supreme Court order issued on the 30th day of June, 1961, directing me to investigate certain irregularities in the handling of municipal traffic matters in the court, and by various members of the police department in Barrington. It is pursuant to that order that I ask you to come in here today, and ask you questions.

Before I do, I want to advise you that anything you say must be voluntary, and of your own free will, without any coercion or threat or promise of reward. I want to advise you also anything you say may be used against you or any person in any subsequent criminal proceeding in our courts in New Jersey. You do have a privilege to refuse to disclose any matters which you feel would tend to incriminate you. However, being aware of that, and if you make a disclosure, you waive that privilege or right in relation to any matters pertaining to this investigation, *there is one limitation of your privilege to the event that a proceeding may be brought against you under the laws of our state as a police officer, to have you removed from office if you refuse to answer my questions put to you pertaining to your official duties. Understanding this, Mr. Murray, do you wish to proceed this morning and answer the questions I put to you?* (Emphasis added).

A. Yes.

The "laws of our state", "statute" and "under our laws" referred to in the foregoing meant N.J.S.A. 2A:81-17.1. All appellants were public employees and that statute makes mandatory the discharge of any public employee who claims or asserts the constitutional privilege against self-incrimination when re-

quired to testify upon matters relating to his official conduct. In addition, the statute provides that any person "so forfeiting his office . . . shall not thereafter be eligible for election or appointment to any public office, position or employment in the State."

The investigation conducted by Deputy Attorney General Rigg was subsequently referred for completion to the Prosecutor for Camden County, New Jersey. Thereafter, Assistant Prosecutor Sidney Kaplan demanded and obtained additional statements from each of the appellants herein covering the same subject matters as the statements taken by Deputy Attorney General Rigg. The Kaplan statements, like the Rigg statements, were admitted into evidence at the trials over the objections of defense counsel. But the Kaplan statements differed from the Rigg statements in that Kaplan, in warning the appellants of their right to remain silent, did not threaten and apparently made no reference to the possible loss of employment should they remain silent. At the trials, defense counsel argued that the threats made by Rigg concerning employment forfeiture carried over to the statements later taken by Kaplan, so that the appellants were under the same coercive compulsion at the time the Kaplan statements were obtained.

In two separate indictments (see 13(1)R. 1 and 13(2)R. 333) the various appellants were charged with conspiring to obstruct and pervert the due administration of the Motor Vehicle Traffic Laws of New Jersey, in violation of N.J.S.A. 2A:98-1. Garrity, Virtue and Naglee were brought to trial April 29, 1963. Holroyd, Elwell and Murray were brought to trial May 27, 1963. Both trials were before the same presiding Judge and both cases were prosecuted by the

same Assistant Prosecutor for Camden County, New Jersey. During the trial, the prosecution offered, over the vigorous objections of defense counsel, the statements obtained from each defendant. The trial court rejected defense counsel's objections and ruled that the statements were voluntarily given and admitted the statements in evidence.

The principal objection of counsel was that the warning of loss of job pursuant to N.J.S.A. 2A:81-17.1, if defendants refused to give a statement, not only violated their constitutional guarantee against self-incrimination, but was a threat so strong and coercive as to thereafter make involuntary any statement which a defendant might make.

A portion of the argument between defense attorney Malandra and prosecutor Aiken before Judge Mitchell of the Camden County Court follows:

> Mr. Malandra: This is where I would like to enter an objection, to this statement. If Your Honor pleases, this is on the ground that the statement with the admonition as given by Mr. Rigg, could not thereafter be voluntary. You will note that the statement is completely void of any remark whatsoever concerning the right of this defendant to have counsel. There is no remark whatsoever concerning counsel.[3] Secondly, may it please the court, you will note that the latter part, the last statement made by Mr. Rigg is that *this right or privilege that you have is limited to the extent that you as a police officer, when sworn and asked questions pertaining to your office and your conduct therein, if you refuse to answer, you may then be subject to a proceeding to have you re-*

[3] No issue is raised in this appeal as to right of counsel, or the denial thereof.

moved from the department. (Emphasis added) Now, as I say, Your Honor, that this is not advising the defendant of his constitutional right, by saying to him if you do not cooperate, you will be removed from the police force. Now, there is your choice. Either come on or get out. Now, under those circumstances, may it please the court, I cannot see how this statement can be voluntary.

The Court: I'll hear you, Prosecutor.

Mr. Malandra: Iwould like to add, may it please the court that this is not an ordinary statement. This is more or less like an inquisition by the Attorney General of the State of New Jersey, waiving a Supreme Court flag. Now, Your Honor please, under those circumstances, I can't see how it could be voluntary, anything that he said after that.

Mr. Aiken: Your Honor, I think the admonition contained in the statement of rights by Mr. Rigg is quite required, as a matter of fact, I believe it to be required by our statutes and I would like to call the court's attention to 2-A:8771.1, I think it is, but anyway that is the Statute, Your Honor, as I understand it, requiring this warning to be given because it also requires that if a public official does not testify to give his statements that proper proceedings, he is subject to removal from office, or whatever it happens to be. And, I think that if the warning had not been given, then the defendants would be in the position of coming in and saying, well, I wasn't warned of that situation, and I should've been. So that he can play it either way, if he desires, and obviously that is not the intent of the statute.

Mr. Malandra: If Your Honor please, I argue that a little bit differently, that statute says that if a police officer refuses to testify by taking the fifth amendment, he subjects himself to being chased out of the department. That's got nothing to do with

this, because if he refused to take it, the next procedure not this one, the next proceeding would be to take him out, but he would certainly have a right to refuse here. This was given as a threat. [13(1)R. 16-17].

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We're in a position where an entire life is gone, job, pension, life, everything is gone. [13(1)R. 19].

* * * * * *

The Court: That is where upon you and the Assistant Prosecutor disagreed. Well, let's confine our argument to that particular paragraph, to crystallize the issue here in dispute. Now, 17.1 was what you were talking about, so that we may all understand 17.1, let's read it.

I'm reading from New Jersey Revised Statutes, annotated 2A:81-17.1, forfeiture of office or employment pertaining to pension rights, to testify on the ground it is incrimination. This of course, is a statute passed by the legislature of New Jersey, and it is comparatively new in origin . [13(1) 20].

* * * * * *

Now, let us assume that some policeman or some public official is acquainted with this particular statute. Don't you think that it's the right and the obligation of the person questioning him to explain his rights, either he can stand merely upon his constitutional rights, which are guaranteed, they could have refused to answer. The only thing if they had refused to answer, then as a public official, an answer would be you must forfeit certain rights that you ordinarily would have under the constitutional provisions, merely because they're a public official, whereas you for example, you could still refuse to answer and nobody could do a thing to you, but if you were a public official, the legislature saw fit to arrange a proceeding, where if it

were probably proven, you could forfeit the rights you had under the particular office, and alike.

Now, that is what the legislature said, my feelin the matter, and of course, is that instead of, shall we say jeopardizing his position, *I think Mr. Rigg was obligated under the circumstances, to give this explanation to him, not as a threat, but explanation of his rights legally.* (Emphasis added). [13(1)R. 22].

* * * * * *

We have a situation here where the attorney general, in my opinion, at least, is telling him you have a choice of either relying entirely upon the constitutional rights, but if you do, I want to inform you that by the state law of New Jersey, you may get hurt as far as a penalty is concerned. Now that is the way I read it. You may have some different opinion or interpretation, and if mine is wrong, please persuade me that I am wrong by additional argument.

The appellants were all found guilty as charged. They thereupon filed a consolidated motion for new trial and arrest of judgment. That motion alleged *inter alia* that (1) the incriminating statements had been obtained and then admitted into evidence in violation of appellants' rights under the Fourteenth Amendment, and (2) the statements were illegally admitted into evidence in that they had been obtained "by force of a statute that violated the New Jersey Constitution and the 14th Amendment of the U. S. Constitution." See 13(2)R. 529. Judge Mitchell of the Camden County Court denied the motion on June 21, 1963. In an extended written opinion, he ruled *inter alia* that (1) the statements made by the appellants were voluntary as a matter of law, despite the references made to the New Jersey employment forfeiture statute, and

(2) that statute, N.J.S.A. 2A: 81-17.1, in terms of its application in these circumstances, "does not violate the Federal Constitution." See 13(2)R. 533 at 545, 547.

Thereafter the appellants each received a sentence of three months imprisonment in the county jail, which sentence was suspended on condition that a $100 fine be paid. See 13(1)R. 312-314; 13(2)R. 552. The fines were paid and the appellants were not committed.

In due course notices of appeal were filed by the appellants in the respective proceedings. While these two appeals were pending before the Appellate Division of the Superior Court of New Jersey, the Supreme Court of New Jersey "certified the matter on our own motion before argument in the Appellate Division" in both cases. See 13(1)R. 317; 13(2)R. 554. The arguments which had been made in the new trial motion and which had been ruled on by the County Court were renewed before the Supreme Court. That court ruled in the Naglee-Garrity-Virtue appeal that the convictions were proper and that the references to possible employment forefeiture did not render the incriminating statements involuntary or inadmissible under the Fourteenth Amendment. As to the claim that the New Jersey employment forfeiture statute, as applied in these circumstances, was invalid under the Fourteenth Amendment, the Supreme Court stated (13(1)R. 327):

> The defendants further contend that N.J.S.A. 2A:81-17.1 is unconstitutional. As we have mentioned earlier in this opinion, Mr. Rigg did not expressly threaten to invoke the sanction of the statute against the defendants Garrity and Virtue. The warning he gave them was to the effect that if they did not cooperate in the investigation they might be subject to dismissal as a result of a

subsequent proceeding. We determined that such a dismissal would be proper even in the absence of a statute. Therefore, we conclude that the defendants, in the circumstances of this case, are not in a position to challenge the constitutionality of the statute.

The Supreme Court found that the Holroyd-Elwell-Murray appeal presented circumstances substantially similar to those in the Naglee-Garrity-Virtue appeal; it further found that the applicable legal principles were identical. The court accordingly entered a *per curiam* opinion affirming the covictions largely on the basis of the reasoning in the Naglee-Garrity-Virtue opinion. See 13(2)R. 553.

THE QUESTION OF JURISDICTION

In its order of March 21, 1966, this Court postponed further consideration of the question of jurisdiction of this appeal to the hearing of the case on the merits. 383 U.S. 941. It thus becomes essential to determine whether this Court's appeal jurisdiction has been properly invoked. See Rule 16(4) of this Court's Rules.

Basically, under 28 U.S.C. § 1257(2), a state court judgment may be reviewed by appeal to this Court "where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity." The factors that here become relevant in assessing the propriety of invoking that appeal jurisdiction are twofold:

(1) The federal constitutional validity of a state statute must have been drawn in question in the courts

below by the protesting parties. *Oxley Stave Co.* v. *Butler County,* 166 U.S. 648, 655.

(2) The decision below must necessarily have involved an adverse resolution of the constitutional issue. But "it is not necessary that the ruling shall have been put in direct terms," as was said in *New York ex rel. Bryant* v. *Zimmerman,* 278 U.S. 63, 67. "If the necessary effect of the judgment below has been to deny the claim that is enough." *Ibid.*

Those factors were satisfied in these proceedings. At the trial court level, the Camden County Court, the appellants in the two proceedings claimed not only that the admission of their statements violated the Fourteenth Amendment but that the New Jersey statute relating to employment forfeiture for public employees declining to testify, N.J.S.A. 2A:81-17.1, was unconstitutional in light of the Fourteenth Amendment. See 13(2)R. 531-532, 534, 545. This contention as to the statute's invalidity was expressly denied by the Camden County Court, which concluded "that N.J.S. 2A:81-17.1 does not violate the Federal Constitution." 13(2)R. 547.

The appellants pursued this contention before the Supreme Court of New Jersey. In the Garrity brief before that court (pp. 43-44) it was asserted that this statute "is unconstitutional and violates the . . . Fourteenth Amendment of the United States . . . because it condemns a person for exercising a legal right." The Holroyd brief (p. 15) argued that if this state statute "requires the present result, it is invalid as applied here, since if conflicts directly with the requirements of the Fourteenth Amendment." The State's brief (p. 12), replying jointly to both the Garrity and Holroyd briefs, urged that the federal

constitutionality of the statute "is not properly raised in this appeal . . . [since] the only real issue in this case is the voluntariness of the statements."

In accepting the State's analysis and in declining to pass upon the federal constitutionality of the New Jersey statute, the Supreme Court of New Jersey did not avoid passing upon the Fourteenth Amendment claim relative to that statute's validity as advanced by the appellants. It necessarily rejected that claim. While the court ruled that the appellants, "in the circumstances of this case, are not in a position to challenge the constitutionality of the statute," 13(1)R. 327, that determination is not decisive or binding on this Court. On matters of standing to raise federal constitutional issues, including standing to question the federal constitutional validity of state statutes, this Court alone is the final arbiter; and in so acting, this Court operates independently of any state court determination as to standing. *Allied Stores of Ohio* v. *Bowers,* 358 U.S. 522, 525.

Thus where the sole basis of the state court's refusal to pass upon a federal constitutional claim is the claimant's supposed lack of standing, a matter within this Court's exclusive province, the refusal must be classed as among those denials of federal constitutional claims which will support an appeal to this Court. It has long been settled that constitutional rights may be denied as much "by the refusal of the state court to decide the question, as by an erroneous decision of it." *Lawrence* v. *State Tax Commission,* 286 U.S. 276, 282; and see *Greene* v. *Louisville & Interurban R. Co.,* 244 U.S. 599, 508; *Smith* v. *Cahoon,* 283 U.S. 553, 564. The particular grounds for such refusal become immaterial, be they lack of standing or some other state procedural

defect. Otherwise, state courts could deprive appellants of their right to appeal to this Court by the simple expedient of finding some procedural reason for ignoring or failing to resolve federal constitutional claims properly raised before them.

Moreover, the claims as to the invalidity of the New Jersey statute under the Fourteenth Amendment were in this instance so intertwined with the claims as to the constitutional impropriety of admitting the incriminating statements (an issue appellants concededly had standing to raise) that the express denial of the latter claims must be construed as encompassing a denial of the former. As subsequently developed herein, the appellants' position is that the major factor contributing to the constitutionally involuntary nature of their statements was the threat of the use of the New Jersey statute in question to deprive them of their jobs and economic livelihood. Thus there is inevitably brought into issue the constitutional validity of N.J.S.A. 2A:81-17.1 as used or applied to formulate a threat, depriving the appellants of their free will in determining whether or not to plead the privilege against self-incrimination. And plainly when a state court has in effect sustained the validity of a state statute as applied to such a set of circumstances as are here present, the "validity" of the statute has been sustained for purposes of an appeal within the meaning of 28 U.S.C. § 1257(2). See *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U.S. 282. Equally plain is the fact that these appellants, having been convicted through use of the incriminating statements induced by threat of invoking the statute, have standing in this Court to protest the validity, under the Fourteenth Amendment's Due Process Clause, of the statute as applied.

The foregoing discussion, of course, relates only to Question 1(a) presented in the Jurisdictional Statement and repeated herein, p. 4, *supra*. The other two questions—Question 1(b) relative to the admissibility of the statements under the Fourteenth Amendment, and Question 2 relative to the due process implications of the investigatory actions of the Supreme Court of New Jersey in these proceedings—are not independently reviewable by appeal since they do not involve the validity of state statutes. But if appellants are correct in assessing Question 1(a) as an appealable issue, the other questions can be considered on the appeal papers at the same time. As noted in *Flournoy* v. *Wiener*, 321 U.S. 253, 263, once an appellant has properly invoked this Court's appeal jurisdiction, he may include in the questions presented on the appeal "any other denial of federal right whether or not capable in itself of being brought here by appeal." See *Prudential Ins. Co.* v. *Cheek*, 259 U.S. 530, 547; *Mishkin* v. *New York*, 383 U.S. 502, 512.

But if appellants be wrong as to the eligibility of Question 1(a) for this Court's appeal jurisdiction, or if this Court does not wish to consider the other non-appealable questions as part of the appeal as to Question 1(a), appellants rest upon the provisions of 28 U.S.C. § 2103. Under that provision any or all questions that are not properly appealable or that cannot be considered as part of a proper appeal must be regarded and acted upon as though contained in a petition for writ of certiorari and as duly and timely presented to this Court. The questions here involved are obviously deserving of the grant of certiorari; and this Court should not only grant the writ but proceed to decide the questions on their merits.

SUMMARY OF ARGUMENT

The New Jersey statute in issue, N.J.S.A. 2A:81-17.1, provides that any person holding public office who refuses to testify upon matters relating to his office or employment in any criminal proceeding wherein he is a defendant upon the ground that his answer may tend to incriminate him shall (1) be removed from his public office, (2) forfeit any vested or future right or tenure or pension granted him by the State, and (3) be thereafter ineligible for election or appointment to any public office or employment in the State.

During the course of an inquiry into the performance of their public duties, the appellant policemen made incriminating statements which were later used against them in criminal proceedings. These statements were secured following a two-part warning to each appellant: (1) any incriminating statement could be used against him, and (2) any invocation of his conceded privilege against self-incrimination might result in his removal from office under the laws of the state—obviously referring to N.J.S.A. 2A:81-17.1. Additionally, New Jersey has no immunity statute applicable in these circumstances, and no suggestion of possible immunity was made to the appellants. The following constitutional considerations emerge from these circumstances:

(1) The introduction and use at the criminal trials of such incriminating statements violated the Due Process Clause of the Fourteenth Amendment. Those statements had been secured as the result of the mental coercion implicit and intended in the threat of removal from office should the privilege against self-incrimination be invoked. The whole purpose of the threat,

confirmed by the legislative intent in enacting N.J.S.A. 2A:81-17.1, was to induce the appellants to forfeit their privilege and to incriminate themselves—thereby removing the so-called "impediment" to investigation represented by the privilege. Thus was destroyed the free will which must surround any decision respecting the invocation or waiver of the privilege. And the resulting statements cannot be described as other than coerced.

(2) The choice imposed upon appellants, the choice between incrimination or job forfeiture, is not one which a state may constitutionally impose. No state may force an individual to "a choice between the rock and the whirlpool" or "impose conditions which require the relinquishment of constitutional rights." *Frost Trucking Co.* v. *Railroad Commission,* 271 U.S. 583, 593-594. Such an alternative deprived each appellant of "the right of a person to remain silent unless he chooses to speak in the unfettered exercise of his own will, and to suffer no penalty . . . for such silence." *Malloy* v. *Hogan,* 378 U.S. 1, 8. The appellants could not make free and rational choices under these circumstances.

(3) The fact that appellants "waived" the privilege and made incriminating statements does not make the coercive threat of employment forfeiture any less significant. The prime purpose of the threat was to force appellants to do precisely what they did do—*i.e.,* forfeit the privilege and incriminate themselves. A successful threat is nonetheless a threat and a coercive tactic.

(4) The provisions of N.J.S.A. 2A:81-17.1, as used here to formulate a threat to inhibit the free exercise

of the privilege against self-incrimination and to force the making of incriminating statements, must be considered invalid under the Due Process Clause of the Fourteenth Amendment. The privilege is a delicate and vulnerable matter, supremely precious in our society. And with respect to such matters, "[t]he threat of sanctions may deter their exercise almost as potently as the actual application of sanctions." *N.A.A.C.P.* v. *Button,* 371 U.S. 415, 433. It is not necessary to await an actual discharge to discern the capacity of this statute to intrude upon constitutional rights and privileges. The very threat of invoking the statute served to deter and destroy the privilege in these circumstances. To that extent, the statute must be deemed invalid. And the appellants, having been the victims of that threat and having lost their freedom of action respecting the privilege, have standing to protest the constitutionality of the statute. Standing, of course, is a matter for determination by this Court; the ruling of the court below that appellants lack standing is not binding. *Allied Stores of Ohio* v. *Bowers,* 358 U.S. 522, 525.

(5) The fact that the appellants were police officers does not destroy their rights relative to the free exercise of the privilege against self-incrimination. Nor does it take from them any rights under the Due Process Clause respecting the introduction and use of incriminating statements obtained by coercive threats. Police officers do not, as a condition of office or by virtue of the lack of any constitutional right to be a policeman, forfeit the constitutional rights and privileges guaranteed to all individuals. Recognition of those rights and privileges does not deny the state's legitimate concern in maintaining and enforcing appropriate

obligations of police officers and in imposing sanctions for actions inconsistent therewith—at least where due process is respected in enforcing such obligations. But these obligations and sanctions, which are not directly in issue here, cannot rise to the point of intrusion upon universally recognized rights and privileges of a constitutional nature. The decision in *Slochower* v. *Board of Education,* 350 U.S. 551, 558-559, recognizes that line of demarcation between constitutional rights and the obligations of public office. In the instant proceedings, that line is breached by any notion that the obligations of police officers justify the destruction of the privilege against self-incrimination or justify the compulsion resulting in the incriminating statements.

Finally, the action of the Supreme Court of New Jersey in ordering the investigations into appellants' activities and participating thereafter in the referral of the matter for prosecution and in the review of the ensuing convictions served to deprive appellants of due process of law in a most elemental sense. Such action by the highest court of the state served to take the "appearance of justice" away from the entire judicial system, influenced as it is by that court. The possibility and appearance of unfairness and prejudgment springing from the judiciary's actions as investigator, prosecutor and judge are too great to escape condemnation under the Due Process Clause of the Fourteenth Amendment. *In re Murchison,* 349 U.S. 133; *Tumey* v. *Ohio,* 273 U.S. 510.

ARGUMENT

I

THE THREAT OF EMPLOYMENT FORFEITURE TO INDUCE ONE TO FOREGO THE PRIVILEGE AGAINST SELF-INCRIMINATION AND THUS TO INCRIMINATE ONESELF RENDERS THE RESULTING STATEMENTS COERCIVE AND HENCE INADMISSIBLE IN STATE CRIMINAL PROCEEDINGS. THE STATE EMPLOYMENT FORFEITURE STATUTE, SO USED AS A THREAT, IS INVALID UNDER THE FOURTEENTH AMENDMENT.

A. General Principles as to Involuntary Statements

There can be no quarrel here with the proposition, repeatedly enunciated by this Court, that the Due Process Clause of the Fourteenth Amendment "invalidates a state court conviction grounded in whole or in part upon a confession which is the product of other than reasoned and voluntary choice." *Lee* v. *Mississippi,* 332 U.S. 742, 745. As was said in *Leyra* v. *Denno,* 347 U.S. 556, 558, and repeated in *Payne* v. *Arkansas,* 356 U.S. 560, 561, "The use in a state criminal trial of a defendant's confession obtained by coercion—whether physical or mental—is forbidden by the Fourteenth Amendment."

The coercion employed to deprive a confession or incriminating statement of its voluntariness need not, of course, be of a violent or physical nature. A statement obtained through use of improper threats or inducements is as constitutionally defective as a statement secured through use of the rack or screw. "Since *Chambers* v. *Florida,* 309 U.S. 227, this Court has recognized that coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition." *Blackburn* v. *Alabama,* 361 U.S. 199, 206. Interrogation that is "psychologically rather than physically

oriented," as demonstrated in *Miranda* v. *Arizona,* 384 U.S. 436, 448, may be such as to drain from the resulting statement its truly voluntary characteristics. Even so mild a tactic as the refusal to allow a suspect to call his wife until he confessed may, under certain circumstances, amount to impermissible coercion. *Haynes* v. *Washington,* 373 U.S. 503.

Whatever the case, whatever the means of interrogation employed, the critical question "is whether the defendant's will was overborne at the time he confessed," *Lynumn* v. *Illinois,* 372 U.S. 528, 534. The "true test of admissibility is that the confession is made freely, voluntarily and without compulsion or inducement *of any sort,*" *Wilson* v. *United States,* 162 U.S. 613, 623 (emphasis added).

This concept of voluntariness and freedom from any kind of compulsion in making incriminating statements is an integral part of the constitutional notion that one's assertion or waiver of the privilege against self-incrimination must be the product of a rational intellect and a free will. The exclusion from state criminal trials of statements that are "the result of the deprivation of his [the defendant's] free choice to admit, to deny, or to refuse to answer," *Lisenba* v. *California,* 314 U.S. 219, 241, is but one way of enforcing the constitutional command respecting "the right of a person to remain silent unless he chooses to speak in the unfettered exercise of his own will, and to suffer no penalty . . . for such silence." *Malloy* v. *Hogan,* 378 U.S. 1, 8. In this sense and at this juncture, as the *Malloy* case demonstrates, 378 U.S. at 6-9, the traditional due process concepts of the Fourteenth Amendment and the self-incrimination concepts of the Fifth Amendment coalesce.

Thus the emphasis, viewed from either constitutional standpoint, is always upon the exercise of free will involved in the making of an incriminating statement. If that freedom or free will has been overcome through either physical or mental coercion of any kind then the resulting statement is violative both of the due process principles and of the privilege against self-incrimination.

B. Application of Those Principles to These Appellants

Tested by the standards of voluntariness and free will heretofore employed under either constitutional approach, the statements taken from these appellants cannot stand scrutiny. The determination by the Supreme Court of New Jersey (see 13(1)R. 323 and 13(2)R. 557-558) that there was "no physical coercion, no overbearing tactics of psychological persuasion, no lengthy incommunicado detention, and no efforts to humiliate or ridicule the defendants" and that "the interrogation was conducted with a high degree of civility and restraint" is neither decisive nor particularly relevant.[4] The critical and undeniable fact remains that each appellant's statement was taken following a two-part warning by the State's Deputy Attorney General:

(1) A statement to the effect that the individual under investigation has, under the laws of New Jersey, a privilege to refuse to disclose any matter which might

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[4] The appellants Holroyd, Elwell and Murray, unlike the other appellants, made their statements in the presence of their lawyer. That fact was said by the Supreme Court of New Jersey to make the circumstances as to them "even more persuasive of voluntariness" than was true with respect to the unrepresented appellants. See 13(2)R. 558.

tend to incriminate him, a privilege that was waived if he did thereafter make an incriminating disclosure.[5]

(2) A statement to the effect that the privilege is limited, or "somewhat limited," by the fact that if the individual refused to answer questions concerning his official duties as a police officer a proceeding "may be brought against you under the laws of our state . . . to have you removed from office." The state law or statute thus referred to was N.J.S.A. 2A: 81-17.1, providing for the summary and permanent forfeiture of state office, and eligibility therefor, of any public employee who asserts the privilege against self-incrimination or who refuses to testify concerning the conduct of his public office. Both the prosecutor and the trial court later made clear that, in their judgment, this statutory provision either justified or required the warning about the possible loss of public

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[5] "Although not written into our State Constitution (as it is in the Fifth Amendment to the Federal Constitution and in the constitution of all our sister states except Iowa), and not given even statutory expression until it appeared as section 4 of the Evidence Act of 1855 . . . the privilege has been firmly established in New Jersey since our beginnings as a State." *State* v. *Fary*, 19 N.J. 429, 435, 117 A. 2d 499, 501. See also *Laba* v. *Newark Board of Education*, 23 N.J. 364, 389, 129 A. 2d 273, 287.

The New Jersey privilege against self-incrimination is now codified as Rule 25 of the Rules of Evidence adopted by the Supreme Court of New Jersey (July 1, 1965), N.J.S.A. 2A :84A-19.

employment, not as a threat but in explanation of the individual's rights. See 13(1)R. 16-30.[6]

Analytically and realistically, these warning statements by the Deputy Attorney General offered the appellants the choice between only two real alternatives—either to incriminate themselves or to forfeit their public employment. While repeated references were made to the right under state law not to incriminate themselves, the appellants were quickly advised that this right would be waived by voluntary disclosure of any incriminating facts and those facts would be usable in any subsequent criminal proceeding. And they were then told in no uncertain terms that any assertion of that privilege might subject them to proceedings to remove them from office.

Here, then, was no simple or free choice between speaking or remaining silent. If one chose to remain silent in reliance on the privilege against self-incrimination, one was on notice of the possibility of immediate and permanent removal from public office. But if one chose to speak, one knew not only that the privilege was waived but that the ensuing testimony could be used for criminal prosecution purposes. Overshadowing this latter choice, moreover, was the fact

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[6] The court below stated that the State's Deputy Attorney General at the time of warning about the possible loss of employment "neither referred to the statute by name nor quoted from it" and thus did not "expressly threaten to invoke the sanction of the statute." See 13(1)R. 324, 327. But there can be no question, particularly in light of the later statements by the prosecutor and by the trial court, that N.J.S.A. 2A:81-17.1 was the statute Deputy Attorney General Rigg referred to in threatening the loss of employment should the privilege against self-incrimination be invoked. No other statute having that effect was suggested by the Supreme Court of New Jersey. Indeed, there is none.

that New Jersey has no general or special immunity statute usable to protect appellants from the criminal consequences of their own testimony.[7] Indeed, the very prosecutions and convictions now before this Court stand as mute testimony to the fact that no immunity was possible under New Jersey law once appellants began their incriminating statements. Cf. *Regan* v. *New York,* 349 U.S. 58; *Stevens* v. *Marks,* 383 U.S. 234.

In sum, the appellants were forced either to incriminate themselves or to lose permanently their right to public employment. Whatever privilege they had to remain silent, to refuse to incriminate themselves, was said to be limited by the New Jersey statute, N.J.S.A. 2A:81-17.1, forfeiting their public office upon the assertion of the privilege. As the Supreme Court of New

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[7] New Jersey has no general immunity statute, either of an automatic or conditional nature, comparable to that in New York. See *Stevens* v. *Marks,* 383 U.S. 234, 242. New Jersey does have eight statutes conferring immunity in special situations not here applicable:

1. Proceedings before Waterfront Commission of New York Harbor. N.J.S.A. 32:23-86(5).

2. Proceedings before state Civil Service Commission. N.J.S.A. 11:1-15.

3. Proceedings under Banking Act of 1948. N.J.S.A. 17:9A-263.

4. Proceedings before Board of Public Utility Commissioners. N.J.S.A. 48:2-36.

5. Proceedings under state Savings and Loan Act. N.J.S.A. 17:12A-90.

6. Proceedings under New Jersey Securities Law. N.J.S.A. 49:1-19; 49:1-20.

7. Proceedings to recover penalties under statute controlling shellfish and shellfish industry. N.J.S.A. 50:5-11.

8. Investigations by State Water Policy Commission. N.J.S.A. 50:1-29.

Jersey has made plain, *Laba* v. *Newark Board of Education,* 23 N.J. 364, 393, 129 A. 2d 273, 289, once the public employee has asserted the privilege in an investigation into the conduct of his office "then dismissal is mandatory." Or, as put more bluntly in *Lowenstein* v. *Newark Board of Education,* 35 N.J. 94, 101, 171 A. 2d 265, 268, the obligation of the public employee to respond fully is so strong that he is "without any right to rely on the constitutional privileges."

The thrust of the statute in question becomes clear. It was designed "to remove the impediment to investigation which is contained in constitutional provisions protecting the privilege against self-incrimination" and to "penalize any person who refuses to testify upon matters relating to his office . . . by requiring that he forfeit his office."[8] The only alternative to such forfeiture, of course, was the one the appellants chose—self-incrimination without any possible immunity from prosecution.

This is precisely the kind of improper choice referred to in *Frost Trucking Co.* v. *Railroad Commission,* 271 U.S. 583, 593, quoted last term in *Stevens* v. *Marks,* 383 U.S. 234, 243—"a choice between the rock

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[8] Statement appearing at end of the New Jersey Senate bill that became N.J.S.A. 2A:81-17.1, reprinted in full in the Appendix A hereto, pp. 1a-2a, *infra.* That statement also recognized that the argument could be made "that the bill in effect nullifies the constitutional protection against self-incrimination for the public officials involved. They may exercise their privilege, but to do so involves the loss of their primary livelihood." But the statement went on to point out that it could be said, however, "that one bill will not deprive any person of his constitutional right to refuse to testify, but does provide that no person serving the public can hide his criminality behind that privilege and still hold public office. An official may assert his constitutional right, but he has no constitutional right to hold his office."

and the whirlpool." New Jersey has here forced each appellant, to quote further from the *Frost* case, to "an option to forego a privilege [public employment] which may be vital to his livelihood, or to submit to a requirement [self-incrimination] which may constitute an intolerable burden." Such an option, such a choice, no state can constitutionally force upon a citizen. No state, said this Court in *Frost,* at p. 594, may "impose conditions which require the relinquishment of constitutional rights," for "[i]f the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all" and it is "inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence." See also the state-imposed choice held invalid in *Baggett* v. *Bullitt,* 377 U.S. 360, 374.[9]

Such a state-imposed choice of evils is the very antithesis of a *free* choice by the individual concerned. At the very juncture when these appellants should have had complete freedom in determining whether to remain silent in reliance on their privilege or to incriminate themselves, these appellants were forced instead to choose between forfeiting their jobs or incriminating themselves.

That kind of alternative deprived each appellant of the right which *Malloy* v. *Hogan,* 378 U.S. 1, 8, speaks of as "the right of a person to remain silent unless he

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[9] In *Baggett* this Court held that "The State may not require one to choose between subscribing to an unduly vague and broad oath, thereby incurring the likelihood of prosecution, and conscientiously refusing to take the oath with the consequent loss of employment, and perhaps profession, particularly where 'the free dissemination of ideas may be the loss.'" 377 U.S. at 374.

chooses to speak in the unfettered exercise of his own will, and to suffer no penalty . . . for such silence." To advise a person under investigation that he has a right not to incriminate himself but that if he exercises that right he may suffer summary and permanent loss of his job must be classified as among those "interrogation practices which are likely to exert such pressure upon the individual as to disable him from making a free and rational choice." *Miranda* v. *Arizona,* 384 U.S. 436, 464-465. What purpose is served by informing the individual that if he asserts the privilege against self-incrimination he "may be subject to a proceeding to have you removed from office" other than to force him against his free will to abandon the privilege?[10] When the stated purpose of the job forfeiture statute is "to remove the impediment to investigation which is contained in constitutional provisions protecting the privilege against self-incrimination," is there any doubt that the "impediment" is the privilege itself and that the warning about possible loss of employment is designed to frighten the person into abandoning the "impediment"?

But to remove that "impediment" by threat of job forfeiture is completely contrary to any exercise of free will in the matter on the part of the individual concerned. The very nature of the statute is such as to be a brooding inducement, a covert threat and a coercive tactic, all designed to impel the person under investigation to abandon his privilege against self-incrimination—and to abandon it precisely at the point

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[10] In the trial judge's words, "We have a situation here where the attorney general, in my opinion, at least, is telling him you have a choice of either relying upon the constitutional rights, but if you do, I want to inform you that by the state law of New Jersey, you may get hurt as far as a penalty is concerned." 13(1)R. 23.

in time when *Malloy* v. *Hogan* says the individual must make a determination about exercising or abandoning the privilege "in the unfettered exercise of his own will."

Indeed, the determination to waive the privilege and to make incriminating statements that may subject one to criminal prosecution, particularly in the absence of any immunity statute, is so critical and so fraught with serious consequences that particular care should be taken to insure that the freest possible atmosphere surrounds the determination. That type of decision deserves the most careful consideration without the distraction and compulsion of pressures other than those within the four corners of the decision itself.

But the atmosphere cannot be free if the threat of employment forfeiture hangs over the determination, a threat which deals with a matter foreign to the relevant and rational considerations at stake. And to say, as the prosecutor here said, that the references to the forfeiture possibilities were merely an explanation of legal rights to which appellants were entitled is merely a bootstrap argument; if those so-called "legal rights" are inherently a coercive threat the very "explanation" of them becomes the vehicle for conveying that threat. Not even the Supreme Court of New Jersey could deny that such an "explanation" constituted "compulsion"; it merely said that the warning "was a type of compulsion which may be legitimately used." 13(1)R.325.

C. The Coercion Implicit in the "Waiver" of the Privilege

Moreover, the coercive pressure implicit in the references to possible employment forfeitures is nonetheless constitutionally significant because the appellants here "waived" their privilege and incriminated them-

selves. While impossible of precise measurement, the coercion that is the heart and the intent of the employment forfeiture statute must be assumed to have had its impact. And any determination to forego the privilege after being warned about this statute, however absent may be the indicia of other forms of coercion, must be assumed to be impregnated with this statutory threat. Just as the denial of the right to the assistance of counsel is assumed to be prejudicial without indulging "in nice calculations as to the amount of prejudice arising from its denial," *Glasser* v. *United States,* 315 U.S. 60, 76, so must a statutory threat of employment forfeiture be assumed to be prejudicially effective without indulging in "nice calculations."

Faced with the choice between losing their privilege or losing their livelihood, these appellants chose the former, the loss of the privilege, as what they considered to be the lesser of two evils. But as Mr. Justice Holmes wrote in *Union Pacific R. Co.* v. *Public Service Commission,* 248 U.S. 67, 70,

> "It always is for the interest of a party under duress to choose the lesser of two evils. But the fact that a choice was made according to interest does not exclude duress. It is the characteristic of duress properly so called."

In other words, the fact that the appellants bent to the coercive thrust of the employment forfeiture statute does not make their actions constitutionally voluntary. "Were it otherwise," Mr. Justice Holmes has said, "as conduct under duress involves a choice, it always would be possible for a state to impose an unconstitutional burden by the threat of penalties worse than it in case of a failure to accept it, and then to declare the acceptance voluntary . . ." *Ibid.,* at 70.

And the coercion was nonetheless significant because there may have been evidence other than the incriminating statements justifying the verdicts of guilt. It is too late in the day to question the settled proposition that " a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard to the truth or falsity of the confession, *Rogers* v. *Richmond,* 365 U.S. 534, and even though there is ample evidence aside from the confession to support the conviction." *Jackson* v. *Denno,* 378 U.S. 368, 376.

It follows that appellants' statements, made under the threat of having their public employment terminated should they invoke their conceded privilege against self-incrimination, must be considered the products of a constitutionally coercive threat and hence must be deemed inadmissible at their trials. The convictions must thus be considered invalid under the Due Process Clause of the Fourteenth Amendment.

D. The Constitutional Invalidity of the New Jersey Statute

It now becomes plain that, as used and applied in the circumstances of these proceedings, the New Jersey employment forfeiture statute, N.J.S.A. 2A:81-17.1, must be considered invalid under the Due Process Clause of the Fourteenth Amendment.

That statute was used here as a threat, a coercive tactic, to induce the appellants to forego their privilege against self-incrimination and to incriminate themselves. The free exercise of that privilege, like the free exercise of the First Amendment freedoms, is a matter both "delicate and vulnerable, as well as

supremely precious in our society." *N.A.A.C.P.* v. *Button,* 371 U.S. 415, 433. And it is now well established that, with respect to such matters, "[t]he threat of sanctions may deter their exercise almost as potently as the actual application of sanctions." *Ibid.,* 433; and see *Dombrowski* v. *Pfister,* 380 U.S. 479, 486.

Thus the mere threat of employment forfeiture, as shown in these proceedings, may have as chilling an effect upon the free exercise of the privilege against self-incrimination as an actual dismissal under the statute in question. That being the case, it is not necessary to await the fall of the heavy hand of the statute to discern its capacity for intrusion upon rights and privileges of transcendent value in our constitutional way of life. It can be seen, here and now, that the statute has an inhibiting effect upon the privilege against self-incrimination. In other words, the threat of invoking the sanctions of this statute has operated to restrict and to preclude appellants' free exercise of the privilege, resulting in forced self-incrimination. To that extent and as here applied, N.J.S.A. 2A:81-17.1 must be considered constitutionally defective.

By the same token, appellants must be considered as having standing to protest the constitutionality of this statute. They are the individuals whose freedom was inhibited by the coercive threat of the statute. Had that threat not been made, they conceivably might have invoked their privilege. Thus they have been directly and intimately affected by the coercive threat which in itself constitutes the constitutional defect of the statute. And under the repeated decisions of this Court, appellants have standing to complain of the potential and actual deterrence of the free exercise of their freedoms and privileges. See *Cramp* v. *Board*

of Public Instruction, 368 U.S. 278, 283-284; *Staub* v. *City of Baxley,* 355 U.S. 313, 319; *Smith* v. *Cahoon,* 283 U.S. 553, 562. The contrary ruling of the court below is of course not controlling here. *Allied Stores of Ohio* v. *Bowers,* 358 U.S. 522, 525.

Under these circumstances it becomes appropriate for this Court to declare that N.J.S.A. 2A:81-17.1, as applied in terms of a threat to inhibit the free exercise of the privilege against self-incrimination, resulting in the involuntary making of incriminating statements, is violative of the Fourteenth Amendment's Due Process Clause.

II

APPELLANTS' STATUS AS POLICE OFFICIALS DOES NOT MAKE ADMISSIBLE INCRIMINATING STATEMENTS OBTAINED UNDER THREAT OF EMPLOYMENT FORFEITURE

The fact that the various appellants were police officers and officials and that the investigations were directed toward their conduct in office played a decisive role in the decisions of the Supreme Court of New Jersey in these cases. While acknowledging that policemen have the right to assert their privilege against self-incrimination, 13(1)R. 325, the court held that (1) policemen hold sensitive positions in regard to reporting and prosecuting violations of law, (2) they may be discharged for asserting the privilege against self-incrimination, predicated on a failure to cooperate in a situation where duty compels cooperation, and (3) hence the warning to the policemen that their refusal to answer questions might subject them to removal proceedings "was a type of compulsion which may be legitimately used." 13(1)R. 325.

The court below was quite correct, of course, in recognizing that policemen, like other public employees

and like all other citizens, are entitled to the benefits of the privilege against self-incrimination. See *Stevens* v. *Marks*, 383 U.S. 234, 243-244. That great privilege does not lend itself, conceptually or in practice, to some hidden exception with respect to policemen in particular or public officials in general. And, by the same token, policemen are no less entitled to the full benefits of the Due Process Clause of the Fourteenth Amendment when they chance to be under investigation or prosecution. That Clause knows no distinctions between policemen and other individuals. It is offended by the introduction at trial of any incriminating statement obtained by mental or physical duress, be the defendant a bricklayer, a housewife or a public officer.

The critical question here remains what it has always been, *i.e.*, were the incriminating statements obtained from the appellant policemen by threats of employment forefeiture, threats which deprived their statements of the volitional nature that the Due Process Clause demands? If it be true, as appellants urge, that those threats were destructive of the unfettered exercise of appellants' own will in resolving to forego the privilege against self-incrimination, the fact that appellants occupied public office can neither alter the destructive impact nor restore the free will of appellants. The Due Process Clause remains as a barrier to the introduction of statements obtained under such circumstances.

It may well be, as the court below suggested, that a police officer who refuses to cooperate in a proper investigation of his official conduct is acting inconsistently with his police duties. And it may well be that such a police officer is properly subject to subse-

quent dismissal proceedings, as the numerous state courts cited by the court below have held. 13(1)R. 325.[11] It may even be true that this obligation to cooperate "does not depend on the existence of a statute or rule" but is "intrinsic to the position of a police officer." 13(1)R. 325.

But the constitutional or legal propriety of those considerations is not here at stake. Nor are those considerations at all relevant in this setting. These appellants have not been charged with actions inconsistent with their obligations as police officers; they have not been dismissed for having asserted their privilege against self-incrimination. The only issue here concerns the constitutional validity of a coercive threat directed toward compelling the appellants to abandon their privilege against self-incrimination. And the validity of that threat is not affected by the capacity at some later point in time to make good on the threat. Only the constitutional implications of the threat itself, considered as of the time the threat was made, are here relevant.

Indeed, to the extent that the concern with the policeman's obligation to cooperate in official inquiries is carried to the point of denying to the policeman his constitutional rights with respect to those inquiries, the concern by definition over-extends itself. It then becomes a part of the notion that policemen and public officials somehow forfeit all constitutional rights re-

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[11] See, *e.g.*, *Fallon* v. *New Orleans Police Department*, 238 La. 531, 115 So. 2d 844; *Fichera* v. *State Personnel Board*, 32 Cal. Rptr. 159; *Souder* v. *City of Philadelphia*, 305 Pa. 1, 156 A. 245; *Drury* v. *Hurley*, 339 Ill. App. 33, 88 N.E. 2d 728; *Scholl* v. *Bell*, 125 Ky. 750, 102 S.W. 248; *Christal* v. *Police Comm. of San Francisco*, 33 Cal. App. 2d 564, 92 P. 2d 416.

specting official inquiries as a condition of their public employment. That notion is impermissible in our constitutional system. This Court long ago said that no government—federal, state or local—may "impose conditions which require the relinquishment of constitutional rights." *Frost* v. *Railroad Commission,* 271 U.S. 583, 594. And no government may withhold its privileges and bounties on condition that the public employee forego such constitutional rights as the privilege against self-incrimination. See *Steinberg* v. *United States,* 141 Ct. Cl. 1, 163 F. Supp. 590, cited with approval in *Sherbert* v. *Verner,* 374 U.S. 398, 404, fn. 6.[12] Otherwise the right to assert the privilege, which right is universally acknowledged, would become meaningless. No obligation, no condition of public employment, can rise so high as to destroy and render ineffective cherished rights guaranteed to all by the Constitution.

The statement by the court below that policemen are indeed entitled to the benefits of the privilege against self-incrimination reflects the common understanding that any state statute that expressly sought to deny the privilege to policemen would unquestionably be invalid. Yet as the *Frost* case indicated, 271 U.S. at 593, "It would be a palpable incongruity to strike down an act of state legislation which, by words of express divestment, seeks to strip the citizen of rights guaranteed by the Federal Constitution, but to uphold an act by which the same result is accomplished under

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[12] In the *Steinberg* case the Court of Claims held invalid a federal statute providing that federal annuities shall not be paid to federal employees who have asserted the privilege against self-incrimination. Such a statute was said to constitute an indiscriminate classification of the innocent with the guilty and must fall as an assertion of arbitrary power.

the guise of a surrender of a right in exchange for a valuable privilege [such as public employment] which the state threatens otherwise to withhold." See also *Hanover Fire Ins. Co.* v. *Carr,* 272 U.S. 494, 507; *Alston* v. *School Board of City of Norfolk,* 112 F. 2d 992, 997 (C.A. 4); *Peck* v. *Cargill,* 167 N.Y. 391, 60 N.E. 775. Under our Constitution, "what cannot be done directly cannot be done indirectly. The Constitution deals with substance, not shadows. Its inhibition was leveled at the thing, not the name." *Cummings* v. *Missouri,* 4 Wall. 277, 325.

Nor is any different result reached by starting with the aphorism that there is "no constitutional right to be a policeman." *McAuliffe* v. *New Bedford,* 155 Mass. 216, 220, 29 N.E. 517 (per Holmes, J.). This Court need not pause here, any more than it did in *Wieman* v. *Updegraff,* 344 U.S. 183, 192, "to consider whether an abstract right to public employment exists." It is sufficient to say, as in *Wieman,* "that constitutional protection does extend to the public servant whose exclusion [from public employment] pursuant to a statute is patently arbitrary or discriminatory." See also *Torcaso* v. *Watkins,* 367 U.S. 488, 495-496; *Baggett* v. *Bullitt,* 377 U.S. 360; *Shelton* v. *Tucker,* 364 U.S. 479; *Cramp* v. *Board of Public Instruction,* 368 U.S. 278. It need only be added that the public servant, like any citizen, is entitled to assert a constitutional privilege or right free of any coercive threat of employment forfeiture or other penalty. Such a threat is improper as to any individual, regardless of whether his employment enjoys the high status of a "constitutional right."

There must thus be a return to the conceded proposition that policemen and public officials are entitled to

assert the privilege when faced with official inquiries. And once that proposition is accepted, it must follow that the privilege is exercisable in undiluted form. Not only must the privilege be the product of the unfettered will of such persons, but it must be usable without threat or imposition of penalty. *Malloy* v. *Hogan,* 378 U.S. 1, 8; *Griffin* v. *California,* 380 U.S. 609, 614; *Orloff* v. *Willoughby,* 345 U.S. 83, 91. That means that the public employee cannot be summarily and immediately discharged upon the mere assertion of the privilege. See *Slochower* v. *Board of Education,* 350 U.S. 551. Nor can he be cited or punished for contempt for failure to answer questions, once the privilege has been properly asserted. See *Stevens* v. *Marks,* 383 U.S. 234.

Recognition of the public employee's untrammeled right to assert the privilege, of course, does not exclude the right of the state to insist upon the maintenance of certain obligations and duties on the part of the employee. Nor does insistence upon complete freedom in asserting the privilege mean that the state may not discipline or even discharge the employee should his actions in connection with official inquiries be found to be inconsistent with those obligations. As long as the sanctions imposed for dereliction of duty comport with due process, reflect some legitimate concern of the state and are not in the nature of a penalty for asserting a constitutional right or privilege, the sanctions may be permissible.

The decision in *Slochower* v. *Board of Education,* 350 U.S. 551, involved precisely that distinction. The Court there held that New York could not constitutionally use its employment forfeiture provisions—which are virtually identical with those of New Jersey

—to cause the summary dismissal of a public employee for having invoked the privilege against self-incrimination before a congressional committee. In so doing, the Court took pains to point out that "The State has broad powers in the selection and discharge of its employees, and it may be that proper inquiry will show Slochower's continued employment to be inconsistent with a real interest of the State." 350 U.S. at 559. Thus the invocation of the privilege could in some circumstances be considered inconsistent with Slochower's obligations as a public employee—but only after "proper inquiry." What was impermissible, however, was the summary use of the New York law to discharge Slochower immediately upon the assertion of the privilege—thereby causing "the heavy hand" of these provisions to fall on a public employee merely for having freely exercised a constitutional privilege "the full enjoyment of which every person is entitled to receive." 350 U.S. at 558. Such a summary discharge was held to be a direct burden upon the privilege, a penalty for having asserted it.

And so in this case, the immediate threat of summary discharge and permanent loss of employment rights came at a point in time when the appellants were entitled to complete freedom in deciding whether to assert the privilege. The threat was not made merely to enforce an obligation; its true purpose was to force the appellants to forfeit their privilege and in effect to destroy that privilege. And it is that purpose, which was plainly effectuated here, that reveals the constitutional vice in the use of the New Jersey employment forfeiture statute.

That constitutional vice, that destruction of the privilege, is in no way blunted by the possibility that New

Jersey might have used some subsequent procedure to penalize appellants for having failed to cooperate in the investigation. The court below took significant pains to disassociate the threatened dismissal from the provisions of the employment forfeiture statute, stating that the statute had not been specifically referred to in the warnings and that "dismissal as a result of a subsequent proceeding . . . would be proper even in the absence of a statute." 13(1)R. 327. Quite apart from the inconsistency of such a statement with the explicit recognition by the prosecutor and the trial court that the employment forfeiture statute was indeed the one underlying the warnings, see 13(1)R. 16-30, the possibility of subsequent proceedings resulting in dismissal cannot erase the vice of using the threat of dismissal in order to destroy the privilege at its inception, thereby forcing appellants to incriminate themselves.

Once the privilege has been asserted by a public employee it is time enough to consider what punishments and penalties may thereafter properly ensue. But in the instant circumstances, the threat of summary dismissal and permanent loss of public employment eligibility cannot be considered consistent with the employee's right freely to assert or not assert the privilege in the first instance. Such a threat of employment forfeiture must be considered a threat of punishment in one of its severest forms, for "permanent proscription from any opportunity to serve the Government is punishment, and of a most severe type." *United States* v. *Lovett,* 328 U.S. 303, 316; and see *Cummings* v. *Missouri,* 4 Wall. 277, 323. And the use of so serious a threat to destroy the free assertion of the privilege and to compel incrimination can have no legitimate relationship with any power

New Jersey may have to punish a public employee who has been found to have failed in his obligations as an employee.

III

APPELLANTS WERE DEPRIVED OF DUE PROCESS OF LAW AS A RESULT OF THE ACTION OF THE NEW JERSEY SUPREME COURT ORDERING AN INVESTIGATION OF THEIR ACTIVITIES AND THEN REFERRING THE MATTER FOR PROSECUTION

On June 30, 1961, the Supreme Court of New Jersey entered orders directing the State Attorney General or his deputy to investigate the "alleged irregularities in the handling of cases in the Municipal Court of the Borough of Bellmawr" as well as in the Borough of Barrington. The Attorney General was authorized to issue subpoenas, require the attendance of witnesses and the production of documents, impound records, and conduct an *in camera* hearing before a master. This latter provision was later deleted and the Attorney General was instead directed to prepare a report of his investigation and file it with the Clerk of the Supreme Court of New Jersey. See 13(1)R. 318, 322; Appendix B hereto, pp. 3a-8a, *infra.*

During the course of this court-ordered investigation, the appellants made the incriminating statements in issue in these cases. And the Deputy Attorney General having secured such statements after warning each appellant that his employment was in jeopardy should he remain silent, the Attorney General's Office presumably made interim reports to the Supreme Court. Thereafter, and apparently with the concurrence and knowledge of the Supreme Court, the results of the investigation were referred to the Camden County Prosecutor for further investiga-

tion and for grand jury action.[13] The indictments, trials, convictions and appeals followed, the final step being the Supreme Court's certification of these cases "on our own motion before argument in the Appellate Division," 13(1)R. 317, and the affirmance by that Court of the convictions.

Thus the highest court of New Jersey was the actual instigator of these criminal cases. It became directly and intimately involved in the investigation that led to the prosecutions, convictions and affirmances of conviction. In effect that court acted as the grand jury, the grand inquistor; presumably it would not have permitted the reference of the matter to the local prosecutor and grand jury unless it had been convinced, from the Deputy Attorney General's preliminary reports, that the facts showed *prima facie* guilt and warranted the prosecutions.

Moreover, the stamp of approval given these prosecutions by the Supreme Court could not avoid having an impact upon the lower state courts dealing with these cases. An inferior court judge is not likely to ignore the fact that the members of the highest tribunal have felt that the evidence collected in the investigation, which most certainly would be developed at the trials, warranted prosecution and conviction upon proper proof of the facts.

Whatever may be the source of the New Jersey Supreme Court's power to engage in such a non-judi-

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[13] The Camden County Court noted that "Before the investigation of the Attorney General's Office was completed, the matter was turned over to the Office of the Camden County Prosecutor to continue the investigation. During the course of the investigation both the Attorney General's Office and the Prosecutor's Office took statements from the defendants at bar." 13(2)R. 533.

cial act as the instigation and approval of a criminal investigation,[14] the result is to deprive the whole course of criminal procedure in the New Jersey courts of the appearance of the basic disinterestness and impartiality which are so much a part of the hallmark of due process of law. To borrow the words used by this Court in another connection, "These are subtle matters, for they concern the ingredients of what constitutes justice. Therefore, justice must satisfy the appearance of justice." *Offutt* v. *United States,* 348 U.S. 11, 14.[15]

For the highest court of a state, influential as it must be with lower courts and judges, to act as a complainant, investigator, prosecutor and ultimate judge in a given case is as offensive to the Due Process Clause of the Fourteenth Amendment as was the action of the single judge in *In re Murchison,* 349 U.S. 133, in serving both as a "one-man grand jury" and as a judge relative to contemptuous conduct occurring in the

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[14] In *Massett Building Company* v. *Bennett,* 4 N.J. 53, 71 A. 2d 327, Chief Justice Vanderbilt reviewed at length the many non-judicial acts imposed upon the New Jersey judiciary by the State Legislature and recited the historical basis of the judiciary accepting from the Legislature the delegation of non-judicial powers. The decision in that case recognized and affirmed the principle that judges and courts are not obliged to accept legislative grants of authority if such tasks interfere with the proper functioning of the court or involve the court in situations which might reflect on the court's reputation for fairness, impartiality and independence. But the *Massett* decision did not consider the question whether a judge or court engaging in a non-judicial act can thereafter sit in review of that act.

[15] Traditionally, members of this Court who took any part in the prosecution of a case while serving in the Department of Justice before appointment to the Court do not participate in the proceedings before this Court. See, *e.g., United States* v. *Bethlehem Steel Co.,* 315 U.S. 289, 309.

grand jury proceedings. As was said in that case, 349 U.S. at 136-137:

"A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has no interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that 'every procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law.' *Tumey* v. *Ohio,* 273 U.S. 510, 532. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way 'justice must satisfy the appearance of justice.' *Offutt* v. *United States,* 348 U.S. 11, 14.

"It would be very strange if our system of law permitted a judge to act as a grand jury and then try the very persons accused as a result of his investigations. Perhaps no State has ever forced a defendant to accept grand jurors as proper trial jurors to pass on charges growing out of their hearings. A single 'judge-grand jury' is even more a part of the accusatory process than an ordinary lay grand juror. Having been a part of that process a judge cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused. While he would not likely have all the zeal of a prosecutor, it can certainly not be said that he would have none of that

zeal. Fair trials are too important a part of our free society to let prosecuting judges be trial judges of the charges they prefer."

And so in the instant proceedings, as in *Murchison,* it was a violation of due process to have the influential weight of the top judicial body of the State thrown into the investigatory and accusatory stage of a criminal proceeding. That violation was compounded by the fact that the trials, convictions and appeals all took place within the New Jersey judicial system, under the supervision of and subject to the influence of the Supreme Court of New Jersey. The possibility of unfairness and the appearance of unfairness are too strong to escape condemnation by virtue of the Due Process Clause of the Fourteenth Amendment. See *Tumey* v. *Ohio,* 273 U.S. 510, 532; *In re Murchison, supra.*

The fact that this constitutional unfairness was not raised by appellants in the New Jersey courts cannot serve to hide the issue or to invest the state court procedure with an aura of constitutional respectability. The problem is so embedded in basic areas of constitutional due process, and indeed in considerations of jurisdiction to adjudicate guilt under these circumstances, as to warrant the concern of this Court at this juncture. Additionally, another issue before this Court and the issue that was resolved in the New Jersey courts—the admissibility of the incriminating statements of the appellants—is inescapably a part of the problem posed by the admixture of the judicial and the investigatory process. If there be any possible prejudice or lack of disinterestness on the part of the state judicial system by virtue of the investigatory actions of the New Jersey Supreme Court, who can

say that such possible prejudice or lack of disinterestness may not have infected the determinations below as to the voluntariness of statements taken during the court-ordered investigation? The very fact that such a question may fairly be asked is confirmatory of the lack of "the appearance of justice" in this instance.

CONCLUSION

For these various reasons, the judgments affirming the convictions of the appellants should be reversed.

Respectfully submitted,

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September 2, 1966.

bill which was first developed by the Chicago Crime Commission is aimed at strengthening the prosecution in criminal cases. Reports of several recent investigations have recommended enactment of this type of legislation, including the report of the U. S. Senate Committee on the District of Columbia in 1952.

"It is felt by many that the passage by State legislatures of this bill or a similar one would result not only in expediting criminal investigations but also in attracting to office officials with a high standard of integrity and public duty. It is felt, moreover, that it would tend to eliminate from public office those individuals whose only desire for public office is to abuse the trust by participating in practices which cannot stand the light of public exposure.

"It has been argued that the bill in effect nullifies the constitutional protection against self-incrimination for the public officials involved. They may exercise their privilege, but to do so involves the loss of their primary livelihood. It can be said, however, that the bill will not deprive any person of his constitutional right to refuse to testify, but does provide that no person serving the public can hide his criminality behind that privilege and still hold public office. An official may assert his constitutional right, but he has no constitutional right to hold his office."[1]

The statement following the Senate Bill is identical to that contained in the *Suggested State Legislation Program for 1953,* published by the Council of State Governments.[2]

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[1] These two statements are found in New Jersey Session Law 1953, Chapter 259, following page 1759.

[2] Headquarters for the Council of State Governments is 1313 E. 60th Street, Chicago, Illinois. The quoted language and the Council's suggested Act is found at page 117 of its publication, *Suggested State Legislation Program for 1953.*

The wording of the act proposed by the Council was substantially the same as that enacted by the New Jersey Legislature; however, the Council proposed a five-year disqualification from public office, whereas the New Jersey statute provides for permanent disqualification.

APPENDIX B

[Certified copies of the following orders have been filed with the Clerk of this Court.]

SUPREME COURT OF NEW JERSEY

IN THE MATTER OF THE MUNICIPAL COURT OF THE BOROUGH OF BELLMAWR

Order

The attention of the Court having been directed by the Administrative Director of the Courts to alleged irregularities in the handling of cases in the Municipal Court of the Borough of Bellmawr and good cause appearing;

It is on this 30th day of June, 1961 ORDERED that Attorney General David D. Furman or a Deputy Attorney General designated by him be and hereby is appointed, authorized and directed for and on behalf of this Court to investigate the handling of cases in said Municipal Court and the conduct of all the persons connected therewith;

And it is FURTHER ORDERED that the said Attorney General or Deputy Attorney General be and hereby is authorized and empowered to issue subpoenas in the name of the Clerk of the Superior Court, and to subpoena and enforce the attendance of witnesses, to administer oaths, and to require the production of any books, papers, documents or tangible things designated therein, deemed relevant or material in the said investigation, and the process of subpoena authorized herein shall be served in the same manner

and be of the same force and effect as like process in civil actions in the Superior Court;

And it is FURTHER ORDERED that the said Attorney General or Deputy Attorney General impound and take into his custody forthwith all the books, records, files, traffic tickets and other papers and documents of said Municipal Court, as he shall deem relevant or material to said investigation and that while the same are impounded the said Municipal Court shall utilize and maintain such other temporary books and records as may be necessary for the conduct of its business as the Administrative Director of the Courts shall specify;

And it is FURTHER ORDERED that a hearing be held before a Master to be designated by the Chief Justice who shall take such testimony and receive such evidence as shall be presented by said Attorney General or Deputy Attorney General, which testimony shall be recorded by an official court reporter, and in the taking of which the said Master shall not be bound by the strict rules of evidence;

And it is FURTHER ORDERED that the hearing before said Master be held in camera;

And it is FURTHER ORDERED that said Master prepare a report of the hearing before him stating his findings of fact and file with the Clerk of this Court (1) an original and seven copies of said report; (2) an original and seven copies of the transcript of the testimony taken; and (3) the original of all exhibits admitted in evidence at the hearing before him;

And it is FURTHER ORDERED that this investigation be made, a hearing held and a report submitted to this Court by October 1, 1961.

By the Court,

/s/ JOSEPH WEINTRAUB
C.J.

SUPREME COURT OF NEW JERSEY

IN THE MATTER OF THE MUNICIPAL COURT OF THE BOROUGH OF BELLMAWR

Order

ORDERED that the time for the submission of the report in this matter be extended to November 15, 1961.

By the Court,

/s/ JOSEPH WEINTRAUB
C.J.

Dated: September 25, 1961

SUPREME COURT OF NEW JERSEY

IN THE MATTER OF THE MUNICIPAL COURT OF THE BOROUGH OF BELLMAWR

Order

The Order of this Court dated June 30, 1961 is amended to delete the provisions thereof relating to a hearing before a Master and in lieu thereof the Attorney General or Deputy Attorney General is directed to prepare a report of his investigation and file with the Clerk of this Court an original and eight copies of said report along with the original statements, books, papers and documents deemed relevant to said report.

It is further Ordered that the investigation be completed and said report be filed as soon as conveniently possible.

By the Court,

/s/ JOSEPH WEINTRAUB
C.J.

Dated: November 6, 1961.

SUPREME COURT OF NEW JERSEY

IN THE MATTER OF THE MUNICIPAL COURT OF THE BOROUGH OF BARRINGTON

Order

The attention of the Court having been directed by the Administrative Director of the Courts to alleged irregularities in the handling of cases in the Municipal Court of the Borough of Barrington and good cause appearing;

It is on this 30th day of June, 1961 ORDERED that Attorney General David D. Furman or a Deputy Attorney General designated by him be and hereby is appointed, authorized and directed for and on behalf of this Court to investigate the handling of cases in said Municipal Court and the conduct of all the persons connected therewith;

And it is FURTHER ORDERED that the said Attorney General or Deputy Attorney General be and hereby is authorized and empowered to issue subpoenas in the name of the Clerk of the Superior Court, and to subpoena and enforce the attendance of witnesses, to administer oaths, and to require the production of any books, papers, documents or tangible things designated therein, deemed relevant or material in the said investigation, and the process of subpoena authorized herein shall be served in the same manner and be of the same force and effect as like process in civil actions in the Superior Court;

And it is FURTHER ORDERED that the said Attorney General or Deputy Attorney General impound and take into his custody forthwith all the books, records, files, traffic tickets and other papers and documents of said Municipal Court, as he shall deem relevant or material to said investigation and that while the same are impounded the said Municipal Court shall utilize and maintain such other temporary books and records as may be necessary for the conduct of its business as the Administrative Director of the Courts shall specify;

And it is FURTHER ORDERED that a hearing be held before a Master to be designated by the Chief Justice who shall take such testimony and receive such evidence as shall be presented by said Attorney General or Deputy Attorney General, which testimony shall be recorded by an official court reporter, and in the taking of which the said Master shall not be bound by the strict rules of evidence;

And it is FURTHER ORDERED that the hearing before said Master be held in camera;

And it is FURTHER ORDERED that said Master prepare a report of the hearing before him stating his findings of fact and file with the Clerk of this Court (1) an original and seven copies of said report; (2) an original and seven copies of the transcript of the testimony taken; and (3) the original of all exhibits admitted in evidence at the hearing before him;

And it is FURTHER ORDERED that this investigation be made, a hearing held and a report submitted to this Court by October 1, 1961.

By the Court,

/s/ JOSEPH WEINTRAUB
C.J.

SUPREME COURT OF NEW JERSEY

IN THE MATTER OF THE MUNICIPAL COURT OF THE BOROUGH OF BARRINGTON

Order

ORDERED that the time for the submission of the report in this matter be extended to November 15, 1961.

By the Court,

/s/ JOSEPH WEINTRAUB
C.J.

Dated: September 25, 1961

SUPREME COURT OF NEW JERSEY

IN THE MATTER OF THE MUNICIPAL COURT OF THE BOROUGH OF BARRINGTON

Order

The Order of this Court dated June 30, 1961 is amended to delete the provisions thereof relating to a hearing before a Master and in lieu thereof the Attorney General or Deputy Attorney General is directed to prepare a report of his investigation and file with the Clerk of this Court an original and eight copies of said report along with the original statements, books, papers and documents deemed relevant to said report.

It is further Ordered that the investigation be completed and said report be filed as soon as conveniently possible.

By the Court,

/s/ JOSEPH WEINTRAUB
C.J.

Dated: November 6, 1961

FILED
OCT 5 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1965.

No. [redacted] 13

EDWARD J. GARRITY and EDWARD VIRTUE,
Appellants,

vs.

STATE OF NEW JERSEY, *Appellee.*

JAMES HOLROYD, EUGENE D. ELWELL
and DONALD MURRAY, *Appellants,*

vs.

STATE OF NEW JERSEY, *Appellee.*

Criminal Action.

Appeal from the Supreme Court of New Jersey.

MOTION TO DISMISS.

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New Jersey,
Attorney for Appellee, State of
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Court House,
Camden, New Jersey.

JAMES G. AIKEN,
Assistant Prosecutor,
On the Brief.

Huntzinger Printing Corp., *Appellate Printers*, Camden, N. J.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1965.

No. 386.

EDWARD J. GARRITY AND EDWARD VIRTUE,
Appellants,

VS.

STATE OF NEW JERSEY,
Appellee.

JAMES HOLROYD, EUGENE D. ELWELL AND DONALD MURRAY,
Appellants,

VS.

STATE OF NEW JERSEY,
Appellee.

CRIMINAL ACTION.

APPEAL FROM THE SUPREME COURT OF NEW JERSEY.

MOTION TO DISMISS.

Pursuant to Rule 16(b) of this Court, Norman Heine, Prosecutor, Camden County, New Jersey, on behalf of the State of New Jersey, moves to dismiss and/or affirm on the grounds that the question presented is so unsubstantial as not to warrant further argument.

OPINIONS BELOW.

The opinions from which Appellants appeal to this Court are: That of the Supreme Court of New Jersey, entered March 1, 1965, reported in 44 N. J. 209, 207 A. 2d 689 (1965) which is contained in Appendix A of Appellants' Jurisdictional Statement; and that of the Supreme Court of New Jersey, entered March 15, 1965, reported in 44 N. J. 259, 208 A. 2d 146 (1965), which is contained in Appendix B of Appellants' Jurisdictional Statement.

STATUTE INVOLVED.

Official citation: Session Law 1953, Chapter 259, Page 1759, Section 1 and cited as New Jersey Statutes (N. J. S.) 2A:81-17.1:

> "Any person holding or who has held any elective or appointive public office, position or employment (whether State, county or municipal), who refuses to testify upon matters relating to the office, position or employment in any criminal proceedings wherein he is a defendant or is called as a witness on behalf of the prosecution, upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself or refuses to waive immunity when called by a grand jury to testify thereon or who willfully refuses or fails to appear before any court, commission or body of this State which has the right to inquire under oath upon matters relating to the office, position or employment of such person or who, having been sworn, refuses to testify or to answer any material question upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself, shall, if holding elective or public office, position or employment, be removed therefrom or shall thereby forfeit his office, position or employment and any vested or future right or tenure or pension granted to him by any law of this State provided the inquiry relates to a matter which occurred or arose within the preceding five years. Any person so forfeiting his office, position or employment shall not thereafter be eligible for election or appointment to any public office, position or employment in the State."

Official citation: Session Law 1953, Chapter 259, Page 1760, Section 2 and cited as New Jersey Statutes (N. J. S.) 2A:81-17.2:

> If any person shall have forfeited his office by reason of the provisions of section one of this act a proceeding may be instituted hereunder in the Superior Court by any citizen who is a resident of this State by proceeding in lieu of prerogative writ. The court shall hear and determine the same without a jury unless such person shall within ten days after the institution of such proceedings demand a trial by jury. L. 1953, c. 259, p. 1760, §2.

QUESTIONS PRESENTED.

1. Do appellants have standing to question the constitutionality of a statute, N. J. S. 2A:81-17.1, which was not invoked with respect to them?

2. If there is no basic right to public employment, is it reasonable for a State to require, in exchange for the privilege of governmental employment, that a given employee relinquish a given right, that of freedom from self-incrimination, in a given situation, that is, in an official investigation of his conduct in his official capacity in a particular job?

STATEMENT OF THE CASE.

The statements of appellants Garrity and Virtue taken by Deputy Attorney General Rigg were not taken in the presence of the said appellants' attorney but they, the appellants, indicated that they had made arrangements for counsel but did not believe it necessary for counsel to be present.

The statements of appellants Holroyd, Elwell and Murray taken by Deputy Attorney General Rigg were actually taken in the presence of their attorney, John F. Gerry, Esq., a member of the New Jersey Bar.

At no time since the institution of these proceedings have any of the appellants invoked or attempted to invoke the provisions of N. J. S. 2A:81-17.2.

At no time did Assistant Prosecutor Kaplan refer to N. J. S. 2A:81-17.1 in connection with the statements taken from all the appellants by him.

At no time during any proceedings did any of the appellants present or offer to present any evidence that any reference to or the existence of N. J. S. 2A:81-17.1 had any effect on or overbore their will or free and voluntary choice in making the statements in question.

Appellants have brought no proceedings under N. J. S. 2A:81-17.2.

ARGUMENT.

I. There is no substantial federal question. Appellants have no standing to question the constitutionality of a statute, N. J. S. 2A:81-17.1, which was not invoked with respect to them.

Appellants do not have standing to attack the constitutionality of N. J. S. 2A:81-17.1 because this statute was never invoked with respect to them. Article III of the United States Constitution requires that there must be a case or controversy in order for this Court to entertain jurisdiction.

In reality, appellants seek to have the Court determine whether or not their constitutional rights would have been infringed if the statute had been invoked. This point is clear from the opinion of the New Jersey Supreme Court in *State v. Naglee*, 44 N. J. 209, 223 (1965), where the Court said:

> "As we have mentioned earlier in this opinion, Mr. Rigg did not expressly threaten to invoke the sanction of the statute against the defendants Garrity and Virtue. The warning he gave them was to the effect that if they did not cooperate in the investigation they might be subject to dismissal as a result of a subsequent proceeding. We determined that such a dismissal would be proper even in the absence of a statute. Therefore, we conclude that the defendants, in the circumstances of this case, are not in a position to challenge the constitutionality of the statute."

Thus, appellants are questioning the New Jersey Supreme Court's interpretation of the facts as established in the pre-

vious appeal. In order to have standing, appellants should have allowed the statute to be invoked in a subsequent proceeding and then questioned the constitutionality thereof.

In *Poe v. Ullman*, 367 U. S. 497, 503, 81 S. Ct. 1752, 1755, 6 L. Ed. 2d 989 (1961), rehearing denied, 368 U. S. 869, 82 S. Ct. 21, 7 L. Ed. 2d 69 (1961), the Court commented on the fact that within the framework of our adversary system, the adjudicatory process is most securely founded when it is exercised under the impact of a lively conflict between antagonistic demands, actively pressed which make resolution of the controverted issue a practical necessity.

The Court went on to say at 81 S. Ct. 1756, that the best teaching of the Court's experience is not to entertain constitutional questions in advance of the strictest necessity. *Parker v. County of Los Angeles*, 338 U. S. 327, 333, 70 S. Ct. 161, 163, 94 L. Ed. 144 (1949).

In *Poe*, appellants sought to have the Court resolve the constitutionality of the Connecticut birth control statute. This suit was dismissed because the appellants lacked standing to present such a suit. Appellants alleged that appellee Ullman threatened to prosecute them for use of or for giving advice concerning contraceptive devices. The allegation was that in the course of his public duty he intended to prosecute any offenses against the Connecticut law. The Court citing *United Public Workers of America (C. I. O.) v. Mitchell*, 330 U. S. 75, 88, 67 S. Ct. 556, 564, 91 L. Ed. 754 (1947), said at 1754:

> ". . . The lack of immediacy of the threat described by these allegations might alone raise serious questions of non-justiciability of appellants' claims."

Prior to *Poe*, this statute had been brought to the Court in a case in which the plaintiff, seeking to represent others, asked for a declaratory judgment. *Tileston v. Ullman*, 318

U. S. 44, 63 S. Ct. 493, 87 L. Ed. 603 (1943). At that time the Court did not decide the question.

At a later date, the constitutionality of this same Connecticut statute was decided by the Court. *Griswold v. State of Connecticut,* U. S. , 85 S. Ct. 1678, L. Ed. 2d (1965). At this time appellants had adequate standing; the statute had actually been invoked against them.

The case *sub judice* is directly analogous to both *Poe* and *Tileston.* Appellants are asking the Court for a declaratory judgment; they are seeking to represent others against whom the statute might be invoked. It is clear that the Court will not entertain such a case. *Barrows v. Jackson,* 346 U. S. 249, 73 S. Ct. 1031, 97 L. Ed. 1586 (1953). In *Barrows* the Court made its position clear when it said at 1035:

> "There are still other cases in which the Court has held that even though a party will suffer a direct substantial injury from application of a statute, he cannot challenge its constitutionality unless he can show that he is within the class whose constitutional rights are allegedly infringed. *Bode v. Barrett,* 344 U. S. 583, 585, 73 S. Ct. 468, 470; *Jeffry Mfg. Co. v. Blagg,* 235 U. S. 571, 576, 35 S. Ct. 167, 169, 59 L. Ed. 364; *People of the State of New York ex rel. Hatch v. Reardon,* 204 U. S. 152, 160-161, 27 S. Ct. 188, 190, 51 L. Ed. 415."

The case *sub judice* is unlike those in which the appellants were in a position to assert their rights. For example, *Traux v. Raich,* 239 U. S. 33, 36 S. Ct. 7, 60 L. Ed. 131 (1915), in which an employee was permitted to assert the rights of his employer; *Pierce v. Society of Sisters,* 268 U. S. 510, 45 S. Ct. 571, 69 L. Ed. 1070 (1925), where the owners of private schools were entitled to assert the rights of potential pupils and their parents; *Barrows v. Jackson, supra,* where a white

defendant party to a racially restrictive covenant, who was being sued for damages by the covenantors because she had conveyed her property to Negroes, was allowed to raise the issue that enforcement of the covenant violated the rights of prospective Negro purchasers to equal protection, although no Negro was party to the suit, and *NAACP v. State of Alabama*, 357 U. S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1958), where disclosure of membership lists of a constitutionally valid association was invalid as entailing the likelihood of a substantial restraint upon the exercise by petitioner's members of their right to freedom of association. See also *Meyer v. State of Nebraska*, 262 U. S. 390, 43 S. Ct. 625, 67 L. Ed. 1042 (1923); *Adler v. Board of Education*, 342 U. S. 485, 72 S. Ct. 380, 95 L. Ed. 517 (1952); *NAACP v. Button*, 371 U. S. 415, 83 S. Ct. 328, 9 L. Ed. 2d 405 (1963). The case *sub judice* presents a mere possibility in the remote future that appellants might be harmed if the statute in question were invoked; the appeal is premature.

II. There is no substantial federal question. There is no basic constitutional right to public employment, and, therefore, it is reasonable for a state to require, in exchange for the privilege of governmental employment, that a given employee relinquish a given right, that of freedom from self-incrimination, in a given situation, that is, in an official investigation of his conduct in his official capacity in a particular job.

There is no basic right to government employment. *Bailey v. Richardson*, 182 F. 2d 46 (D. C. Cir. 1950), was a suit for a declaratory judgment and an order for reinstatement of plaintiff in the employ of the federal government. The Court held that the President of the United States, in absence of congressional restriction, may remove from gov-

ernment service any person of whose loyalty he is not convinced. In *Bailey*, at page 57, the Court discussed the application of the Fifth Amendment to the situation at hand and said that it has been repeatedly held that government employ is not property and that in this particular case it is not a contract; in terms, the Due Process Clause does not apply to the holding of a government office. The Court went on to say that no function is more completely internal to a branch of government than the selection and retention or dismissal of its employees; so it has been held many times that the power of removal is an incident of the power of appointment. The Court concluded its discussion of this aspect of the law by saying on page 60:

> "But there is no basic right to government employ, any more than there is to employment by any other particular employer."

Since there is no right to government employment, a public official cannot assert that it is unreasonable for him to give up certain rights as a prerequisite to his employment. One who accepts public employment must necessarily give up certain rights as a prerequisite to the holding of such employment.

The New Jersey Court clearly explained the situation with which we are now dealing when it said in *State v. Naglee, supra*, at 221:

> "As policemen, Garrity and Virtue held sensitive positions in regard to reporting and prosecuting violations of the law. Surely, a police officer who refuses to cooperate in a proper investigation of his official conduct is acting inconsistently with his police duties. He is therefore properly subject to subsequent dismissal proceedings. *Fallon v. New Orleans Police Department*, 238 La. 531, 115 So. 2d 844 (Sup. Ct. 1959); *Fichera v.*

State Personnel Board, 217 Cal. App. 2d 613, 32 Cal. Rptr. 159, 163 (D. Ct. App. 1963); see also *Canteline v. McClellan*, 282 N. Y. 166, 25 N. E. 2d 972 (Ct. App. 1940); *Souder v. Philadelphia*, 305 Pa. 1, 156 A. 245, 77 A. L. R. 10 (Sup. Ct. 1931); *Scholl v. Bell*, 125 Ky. 750, 102 S. W. 248 (Ct. App. 1907). The obligation to cooperate does not depend on the existence of a statute or rule. It is intrinsic to a police officer. *Christal v. Police Comm. of San Francisco*, 33 Cal. App. 2d 564, 92 P. 2d 416 (Sup. Ct. 1939). See also *Drury v. Hurley*, 339 Ill. App. 33, 88 N. E. 2d 728 (Sup. Ct. 1949); and *In re Emmons*, 63 N. J. Super. 136 (App. Div. 1960). It is to be noted that the above cases recognize the right of a policeman to assert his privilege against self-incrimination; but he may be discharged for doing so. A subsequent discharge is not predicated upon an inference of guilt from the police officer's refusal to testify, but upon his failure to cooperate in a situation where his duty compels cooperation. See the discussion in *Ratner, 'Consequences of Exercising the Privilege Against Self-Incrimination,'* 24 U. Chi. L. Rev. 472, 503-504 (1957)."

It necessarily follows that a person who accepts a position of public or governmental employment, such as that of a police officer, must give up certain rights as a prerequisite to or consequence of such employment. Among these is the right to be free from self-incrimination in an inquiry pertaining to his official conduct.

An analogous situation is presented in *Konigsberg v. State Bar of Cal.*, 366 U. S. 36, 81 S. Ct. 997, 6 L. Ed. 105 (1961), where the Court said that the Fourteenth Amendment's protection against arbitrary State action does not forbid a State from denying to the appellant admission to the Bar so long as he refuses to provide unprivileged answers to questions having substantial relevance to his quali-

fications. The Court explained its theory of law at 366 U. S. 44-45, where it said:

> "An investigation of this character, like a civil suit, requires procedural as well as substantive rules. It is surely not doubtful that a State could validly adopt an administrative rule analogous to Rule 37(b) of the Federal Rules of Civil Procedure which provides that refusal, after due warning, to answer relevant questions may result in 'the matters regarding which the questions were asked' being considered for the purpose of the proceeding to be answered in a way unfavorable to the refusing party, or even that such refusal may result in 'dismissing the action or proceeding' of the party asking affirmative relief."

The fact that the *Konigsberg* case was concerned with questions pertaining to communist affiliations is not dispositive of the issue. It is not the subject matter of the questions which is important, but rather the fact that those who fail to cooperate in certain inquiries must necessarily face the consequences. Where the information is relevant to one's qualifications or one's official conduct, the right of the State to have this information is paramount to the right of the individual against self-incrimination. As the Court said in *Konigsberg* at 366 U. S. 51:

> "Whenever, in such a context, these constitutional protections are asserted against the exercise of valid governmental powers a reconciliation must be effected, and that perforce requires an appropriate weighing of the respective interests involved."

The Fifth Amendment of the United States Constitution, along with the Fourth Amendment, dictates that citizens have a right to freedom from unconscionable invasions of

privacy. *Mapp v. Ohio*, 367 U. S. 643, 657, 81 S. Ct. 1684, 1692, 6 L. Ed. 2d 1081 (1961). The right against self-incrimination is one of these private rights; that is, a right which may be asserted by a person in his individual capacity. This right should not be interpreted as one which may be asserted by a person in his official capacity in order to keep hidden any misconduct, misfeasance or non-feasance, with respect to the performance of his duties. It is, in effect, a synthesis of the antithesis of the democratic form of government to allow a public official to conduct himself improperly and then to afford the people no opportunity to make inquiry and no recourse to such conduct. It is the duty of a policeman to cooperate in any investigation of police activity. Therefore, it is a reasonable requirement that a given employee forego a given constitutional right as a condition of employment.

There is very little legislative history on the bill from which N. J. S. 2A:81-17.1 and 17.2 evolved. There is no hearing report on the bill and no reference to it in the Rutgers Law Review or the New Jersey Law Journal. Included at the end of the Assembly Bill is the following statement:

> "In his annual message to the Legislature on January 13, 1953, Governor Driscoll stated: 'During recent years, we have witnessed the undefying spectacle of officials who refuse to testify when called before public investigatory bodies. The practice has been common in Washington; it is not unknown elsewhere in the nation. The constitutional privilege against self-incrimination has been used to keep from the public information of the most vital concern and which it has every right to have. This privilege has been invoked by those who have held public office while unfaithful to their trust, irresponsible in action, corrupt or disloyal. There is no

logic in permitting a public official or employee who so refuses to testify to continue to exercise the powers and advantages of his office. I strongly recommend legislative action which will forfeit the office or position, tenure and pension rights of any such person'."

At the end of the Senate Bill, the following statement appears:

"It is proposed by this bill to remove the impediment to investigation which is contained in constitutional provisions protecting the privilege against self-incrimination. It would penalize any person who refuses to testify upon matters relating to his office on the ground that his answer might tend to incriminate him by requiring that he forfeit his office and be prohibited from holding other office for a period of five years. The bill which was first developed by the Chicago Crime Commission is aimed at strengthening the prosecution in criminal cases. Reports of several recent investigations have recommended enactment of this type of legislation, including the report of the U. S. Senate Committee on the District of Columbia in 1952.

It is felt by many that the passage by State legislatures of this bill or a similar one would result not only in expediting criminal investigations but also in attracting to office officials with a high standard of integrity and public duty. It is felt, moreover, that it would tend to eliminate from public office those individuals whose only desire for public office is to abuse the trust by participating in practices which cannot stand the light of public exposure.

It has been argued that the bill in effect nullifies the constitutional protection against self-incrimination for the public officials involved. They may exercise their

privilege, but to do so involves the loss of their primary livelihood. It can be said, however, that the bill will not deprive any person of his constitutional right to refuse to testify, but does provide that no person serving the public can hide his criminality behind that privilege and still hold public office. An official may assert his constitutional right, but he has no constitutional right to hold his office."

Reference to an act of this type appeared in Suggested State Legislation, 1953, of the Council of State Governments, at page 10. The statement reads as follows:

"An Act Relating to Testimony of Public Officials Regarding Conduct in Office."

"This measure which was carried in the 1951 Program of Suggested State Legislation, would penalize any public official who refuses to testify on matters relating to his office on the ground that his answer might tend to incriminate him, by requiring that he forfeit his office and be prohibited from holding other office for a period of five years."

It is apparent from the above statements that the reason for enacting such legislation was to benefit the public in general and guarantee that elected and appointed officials would not use the Fifth Amendment to cover any indiscretion or misfeasance in office. Based on the proposition that the citizens of New Jersey have a right to honest and efficient government, this statute was enacted to insure that there would be total cooperation in any criminal investigation which might take place. Thus, one may assume that the Legislature was of the opinion that the right against self-incrimination was a private right and that it ought not to apply to a public official with respect to his conduct while acting in his official capacity.

In conclusion, although there is little legislative history on this statute, the statements following the bills make clear the point that the statute is a reasonable exercise of the power of the Legislature to insure efficient and proper conduct of public officials. There is no right to governmental employment, and thus it is reasonable to require that public officials give up this constitutional right for the purposes of any official investigation into the performance of official duties.

CONCLUSION.

Appellants have raised no substantial federal questions which warrant further attention of this Court and, therefore, it is respectfully urged that the instant appeal be dismissed, or in the alternative, that the judgment of the New Jersey Supreme Court be affirmed.

Respectfully submitted,

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Attorney for Appellee,
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Opinions Below

There are involved two opinions of the Supreme Court of New Jersey comprising these consolidated appeals. The opinion relating to appellants Garrity, Virtue and Naglee is reported as *State of New Jersey* v. *Naglee,* at 44 N. J. 209, 207 A. 2d 689. It was rendered on March 1, 1965 and appears in the record in R. 13(1) 316. The opinion relating to the appellants Holroyd, Elwell and Murray is reported as *State of New Jersey* v. *Holroyd, et al.* at 44 N. J. 259, 208 A. 2d 146. It was rendered on March 15, 1965 and appears in the record in R. 13(2) 553.

Jurisdiction

Appellants seek to invoke the appeal jurisdiction of this Court under 28 U. S. C. §1257(2). In the alternative, appellants seek to have their appeal entertained as a petition for a writ of *certiorari* under 28 U. S. C. §2103.

A Jurisdictional Statement was filed by appellants on July 22, 1965. On March 21, 1966, this Court entered an order reserving the jurisdictional question and postponing its consideration to the hearing of the case on the merits. 383 U. S. 941. R. 13(2) 562.

Questions Presented

1. Where (a) the laws of a state impose a duty upon police officers to testify in offical investigations relating to the performance of their duties and permit the removal from office of such officers in an appropriate proceeding if the failure to so testify reflects a lack of fitness for public office and (b) a police officer in the course of such investigation is advised of the possibility of his being removed from office for failure to so testify and is further advised at the same time that he was a privilege to refuse to testify,

that any testimony he gives must be of his own free will and that such testimony may be used against him; does such advice, without more, constitute a threat or coercion so that any resultant testimony must be deemed involuntary and inadmissible in a criminal proceeding under the 14th Amendment?

2. Is there a denial of Due Process under the 14th Amendment by virtue of the fact that a State Supreme Court which has jurisdiction over the administration of the state judiciary, including the issuance and disposition of local traffic tickets, initiated an investigation by the State Attorney General of "ticket fixing" involving appellants who were local police officers and eventually the Court sat in final review of the appellants' convictions after the matter, in due course and without further intercession by the Court, was referred to the prosecutor who continued the investigation and presented the matter to a grand jury, indictments were returned and there was a full trial in the appropriate lower state court?

3. Do appellants convicted of crime under state law have the right or standing to raise for the first time on an appeal to this Court the question of deprivation of Due Process under the 14th Amendment on the ground that the highest court which affirmed the convictions had originally initiated the investigation where the defendants had never previously raised such issue?

Constitutional Provisions Involved

United States Constitution, Amendment V:

> "No person shall . . . be compelled in any criminal case to be a witness against himself . . ."

United States Constitution, Amendment XIV, Section 1:

> "No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of the Case

The appellants herein were tried and convicted in two separate proceedings, which have been consolidated on appeal to this Court.

The appellants in one case consisted of Edward J. Garrity and Edward Virtue, police officers of the Borough of Bellmawr, New Jersey, and Helen B. Naglee, now deceased, the Violations Clerk and Court Clerk of the Municipal Court of the Borough of Bellmawr. The second group was composed of James Holroyd, Eugene D. Elwell and Donald Murray, police officers of the Borough of Barrington, each of whom had served as Deputy Violation Clerk of the Municipal Court of the Borough of Barrington.

a. Summary of the proceedings.

The Supreme Court of New Jersey, on June 30, 1961 entered orders directing the Attorney General of the State of New Jersey to investigate the handling of cases in the Municipal Courts of Barrington and Bellmawr and the conduct of all the persons connected therewith (A63a to A66a). Alleged irregularities in the handling of cases in the aforementioned courts had been brought to the attention of the Supreme Court by the Administrative Director of Courts. The Attorney General assigned a Deputy Attorney General to the investigations.

Members of the Barrington Police Department were examined on August 4, 1961, in the presence of an official

court stenographer. The officers (Holroyd, Elwell and Murray), in the presence of their attorney, were fully advised of their legal rights and status by the Deputy (R. 13(2) 351-353, 355-356, 357-358). Each indicated that this was fully understood and would voluntarily give testimony (R. 13(2) 353, 356, 358).

The Bellmawr examination (Naglee, Garrity and White) took place on November 10, 1961. The parties were similarly advised of their rights and status (R. 13(1) 86, 91, 108) and indicated their willingness to testify (R. 13(1) 86, 91, 108). Arrangements were made with Chief Garrity for the taking of statements (R. 13(1) 36). Provisions had been made to have an attorney present for Garrity, but he didn't feel it was necessary (R. 13(1) 53).

Mr. Riggs took statements from each officer pursuant to his investigation. The matter was subsequently referred to the Camden County Prosecutor's office which continued the investigation (R. 13(1) 59, 70). Assistant Prosecutor Sidney Kaplan was assigned to the investigation.

In December, 1962 Mr. Kaplan investigated the officers. After apprising them of their legal rights (R. 13(1) 58-59, 75, 79-80), he took further testimony. The results of both investigations were presented to the Camden County Grand Jury which returned indictments in both cases (R. 13(1) 1, and R. 13(2) 333).

Both cases were tried before the Honorable Anthony C. Mitchell, J.C.C., of the Camden County Court, Law Division, the *Naglee* case on April 29, 1963, the *Holroyd* case on May 27, 1963 (R. 13(1) 11; R. 13 (2) 336). Judgments of conviction for the crime of Conspiracy to Pervert or Obstruct Due Administration of Laws against the defendants were entered on September 26, 1963 (R. 13(1) 312; R. 13(2) 552).

Appeals were separately taken to the Superior Court of New Jersey, Appellate Division (R. 13(1) 315; R. 13(2) 552). The Supreme Court of New Jersey, in both cases, certified the matter on its own motion before argument in the Appellate Division (R. 13(1) 317; R. 13(2) 554). The cases were heard separately on January 5, 1965, and were affirmed (R. 13(1) 330; R. 13(2) 558).

Notices of Appeal to the United States Supreme Court were given on May 25, 1965, and June 11, 1965 (R. 13(1) 330; R. 13(2) 560) and a Jurisdictional Statement submitted (R. 13(2) 562). The cases were consolidated on appeal.

On March 21, 1966, the United States Supreme Court ordered further consideration of the question of jurisdiction postponed to the hearing of the case on the merits (R. 13(2) 562).

b. The Investigations

Prior to the taking of testimony, Deputy Attorney Generall Rigg apprised each appellant of his legal rights and status. Reproduced herein are the statements of Deputy Rigg and a summary of the testimony of each party. Also reproduced are the statements of Assistant Prosecutor Kaplan. The statements of Rigg precede the statements of Kaplan.

1. Edward J. Garrity (R. 13(1) 108)

> "Q. [By Mr. Rigg]: Before I get started, because of the lateness of the hour and other commitments, I will undoubtedly have to question you again, as well as Mrs. Naglee and perhaps one or two of the other officers.

I would just like to establish a few things here quickly now. Before I do, however, you and I are aware of the purposes of the investigation of your being here today. Before I ask you any questions concerning this investigation into the alleged irregularities of the handling of the Municipal Traffic Violations by your department, I want to advise you that anything you say must be said of your own free will and accord without any threats or promises or coercion and anything you say may be, of course, used against you or any other person in any subsequent criminal proceedings in the courts of our state.

You do have, under our law, as you probably know, a privilege to refuse to make any disclosure which may tend to incriminate you. If you make a disclosure with knowledge of this right or privilege, voluntarily, you thereby waive that right or privilege in relation to any other questions which I might put to you relevant to such disclosure in this investigation.

This right or privilege which you have is somewhat limited to the extent that you as a police officer under the laws of our state, may be subjected to a proceeding to have you removed from office if you refuse to answer a question put to you under oath pertaining to your office or your function within that office. It doesn't mean, however, you can't exercise that right. You do have the right. A. No, I will cooperate.

Q. Understanding this, are you willing to proceed at this time and answer any questions? A. Yes."

In testimony given to Deputy Attorney General Rigg and subsequently to Camden County Assistant Prosecutor Kaplan, Garrity indicated the procedure for altering or changing tickets.

He indicated that no change or alteration was done without his direction, authority or consent (R. 13(1) 172, 174, 181, 182). Further, no alterations were made without the consent of the issuing officer (R. 13(1) 182). Garrity testified that he knew that he had no authority to alter the tickets and never indicated he had such authority to Mrs. Naglee (R. 13(1) 173).

In one case, Garrity gave as reason for his conduct that the defendant wasn't a "bad guy" and that he (Garrity) wanted to dispell the defendant's idea that they were "trying to railroad the Pennsylvania motorists" (R. 13(1) 176, 177). He further advised the defendant that it was better not to appear since he would probably be charged more than if he waived his appearance and forfeited his bail (R. 13(1) 177).

In another instance, a ticket was altered because the violator was a truck driver who had a lot of children and was going to lose his job (R. 13(1) 185, 186). Assistant Prosecutor Kaplan took up the investigation in December, 1962. His statement to Chief Garrity follows:

> "Question, Chief Garrity, of course the background of this is the idea that in Bellmawr there was a policy or practice of what is commonly known as fixing tickets which meant altering or changing of traffic tickets and I believe that you are familiar with the fact that that is something that has been suggested. * * * There are some questions we wanted to ask you and before I do, I want to advise you that anything you say must be voluntary, of your own free will and accord, without threats, promises or coercion. Anything you say may be used against you or any person at any subsequent proceeding in the courts of our state. You do have the

privilege under our laws to refuse to make any disclosures which you feel may tend to incriminate you. Now, shall we proceed? Answer, Yes sir." (R. 13(1) 180-181).

Garrity's testimony to Kaplan again admitted to the alterations, and went into greater particularity on individual tickets (R. 13(1) 181-192).

2. Helen B. Naglee (deceased) (R. 13(1) 91)

"Q. [By Mr. Rigg]: Mrs. Naglee, as you know, I am working under a Supreme Court order dated this last June whereby or whereunder I am directed to conduct an investigation of certain irregularities in the handling of motor vehicle cases in the Municipal Court, and apparently the police department here in the Borough of Bellmawr, and it is pursuant to that order that I have asked you to answer some questions which I want to put to you. Before you do, however, I want you to be fully aware of the fact that anything you say must be voluntary and of your own free will and accord without any threats, promises or reward or any coercion.

"You do have a privilege to refuse to make any disclosures or give any answers which may tend to incriminate you or any other person in a subsequent criminal proceeding. That is why you have that privilege under the law.

However, if you do answer a question and make a disclosure, by doing so you thereby waive this right or privilege that you have in relation to the entire investigation. You understand that? A. I do.

Q. And understanding that you are willing to proceed then? A. Yes."

Mrs. Naglee testified that it was a practice in Bellmawr to alter tickets in certain instances (*i.e.*, hardship cases) (R. 13(1) 194). She indicated that she participated in the alterations but didn't feel that what she was doing was unlawful (R. 13(1) 164).

She further admitted signing the judge's name on some of the summonses where, in the space for "court action" there were notations of a date of a proported appearance and plea of guilty as well as a designation of fine and cost, and the proported signature of the judge, where, in fact, the defendant never appeared in court (R. 13(1) 165).

Mrs. Naglee was investigated by Assistant Prosecutor Kaplan in December of 1962. His statement to her was as follows:

> "Helen B. Naglee, sworn, by Mr. Kaplan: Question, Now, Mrs. Naglee, you are connected with the municipal court in Bellmawr? Answer, Yes. Question, In what capacity? Answer, Court clerk and Borough violations clerk. Question, That work deals with police work involving traffic cases, matters of that sort. Answer, That's right. Question, • • • I want to ask you some question, but before I do, I want to advise you anything you say must be voluntary and of your own free will and accord, without any threats, promises or coercion, and anything you say may be used against you or against any other person in any subsequent actions, and you have the privilege of refusing to make any disclosures which you feel may incriminate you. Do you understand that? Answer, Yes sir. Question, Are you willing to proceed? Answer, Yes." (R.13(1) 192, 193).

Mrs. Naglee's testimony to Kaplan was similar in import to that given to Rigg. She testified in greater particularity as to the exact changes made in individual tickets, giving "hardship" as the reason for the changes (R. 13(1) 194-199).

3. Edward Virtue (R. 13(1) 86)

Q. [By Mr. Rigg]: "As you know by now, Detective, I am working under a Supreme Court order issued last June directing me to investigate certain irregularities in the handling of motor vehicle matters in the Municipal Court here in Bellmawr, together with various persons having any connection with the court, including the police department. That is why I scheduled this day, to ask you questions pertaining to this investigation.

"Before I do, I want to advise you anything you say must be voluntary, of your own free will, without threats or coercion or promise of reward and anything you say may be used against you in a subsequent criminal proceeding or proceedings in the courts of our state. You do have under our statutes, as you may know, a privilege to refuse to disclose any matters which may tend to incriminate you; however, if you make such a disclosure with knowledge of this right and without coercion, you may thereby waive this right or privilege with regard to any phase of this investigation.

"This right or privilege that you have is limited to the extent that you, as a police officer, when sworn and asked questions pertaining to your office and your conduct therein, if you refuse to answer, you then may be subject to a proceeding to have you removed from the department. A. Right."

Virtue testified to the fact that he was aware of the practice of ticket fixing and had participated in the alterations (R. 13(1) 156-157). Some of the tickets he altered himself, others he consented to (R. 13(1) 200). He further testified that he was aware that it was established practice in Bellmawr to alter drunken driving cases to careless driving and disorderly conduct charges in hardship cases (R.13(1) 205).

Officer Virtue was investigated by Assistant Prosecutor Kaplan in December of 1962. Kaplan's statement is as follows:

> "Question, Now before we begin, I want to advise you anything you say must be voluntary, of your own free will and accord, without any threats, promises or coercion, and anything you say may be used against you or against any person in any subsequent proceeding in the courts of our state. You do have the privilege under our laws to refuse to make any disclosures which you feel may tend to incriminate you. Do you understand that? Answer, Yes." (R. 13(1) 199).

Virtue testified in detail as to individual alterations (R. 13(1) 199-207). He indicated that it was not uncommon to downgrade a drunken driving charge to a disorderly conduct and careless driving charge in a "hardship" case (R. 13(1) 202).

4. James Holroyd (R. 13(2) 358)

> Q. [By Mr. Rigg]: "All right, under a Supreme Court order dated the 20th of June, 1961, I have been directed to investigate irregularities in the handling of municipal court vehicle matters in the

Borough of Barrington, and how they have been handled by the court, and local police departments. As a result, I have asked you to come in here today so that I may put questions to you. A. Yes.

Q. I want you to realize fully, however, any answers you give must be voluntary, without any coercion, threat, or promise of reward, and those answers may be used against you or any other person. You have a privilege to refuse to disclose any matters which might tend to incriminate you, however, if you make such a disclosure you thereby waive your right or privilege in relation to any phase of this investigation in the future.

Under our laws, as a police officer, you are subject to a statute which provides, however, if you exercise this right or privilege, a proceeding may be instituted against you to have you removed from office. A. Yes.

Q. Knowing of all this, you are willing to proceed? A. Yes."

Lt. Holroyd testified that he knew of and participated in the alterations (R. 13(2) 358). He said that the tickets altered by other officers would have to be cleared with him first; that this was the "practice" (R. 13(2) 358). He gave as the reasons for the alterations "hardships" or a friend would request a ticket of a friend of his be changed (R. 13(2) 359). Holroyd stated that he received nothing for his alterations (R. 13(2) 360).

Officer Holroyd was investigated by Assistant Prosecutor Kaplan in December of 1962. Kaplan's statement is as follows:

"* * * Question, I am going to ask you some questions, but before I do, I want to advise you anything you say must be of course of your own free will, and without any threats, coercion, promises or reward, and I advise you further that you have as has every citizen under the law of New Jersey, the privilege of refusing to disclose any matter which might incriminate you, and further with the full knowledge of this right, if you make any disclosures pertaining to this investigation, you waive that right of privilege with reference to any phase of the investigation which might involve you. With that understanding, you are ready to proceed? Answer, Yes." (R. 13(2) 377-378).

Mr. Holroyd further testified to the usual procedure and method of altering tickets and obtaining a receipt for the fines (R. 13(2) 378-382).

5. Eugene D. Elwell (R. 13(2), 352, 353)

Q. [By Mr. Rigg]: "Mr. Elwell, as you know, I have been directed by the Supreme Court order dated the 30th of June, 1961, to investigate irregularities in the handling of motor vehicle matters in the Municipal Court of Barrington, together with the conduct of all persons connected with this Court, and specifically the police department. It is for this reason I have asked you to be here today, so I could ask you certain questions pertaining to this investigation.

"I want to advise you anything you say to me must of course be of your own free will and of course without any threats, coercion, or promise of reward.

> I advise you further that you do have as every citizen has, under the laws of New Jersey, a privilege to refuse to disclose any matter which may tend to incriminate you, and further with full knowledge of this investigation, you thereby waive this right of privilege, in relation to any phase of this investigation, which might involve you. This privilege is somewhat limited, under our laws, to the extent that a police officer who under oath during investigation, fails to testify or answer a specific question does thereby jeopardize his position on the force and may be removed under the proper proceedings. Understanding that, do you wish to proceed this morning and answer the questions which I intend to put to you? A. I do, sir."

Officer Elwell stated that he personally altered tickets during 1959, motivated by "hardship" cases or to "try to do a man a favor" (R. 13(2) 353). He also changed tickets at the behest of other officers, and stated that just about all the police officers in the force had at one time or another contacted him in this regard (R. 13(2) 354). Elwell further testified that he always altered the tickets at the behest of the defendant, and that he never received anything for altering a ticket (R. 13(2) 355).

The procedure followed in altering tickets was thusly explained by Elwell:

> ". . ., the one requesting the favor being done would naturally come to me about it first, he would have the five dollars, whatever it would be, for parking and ask if it was all right and I said yes, and the five dollars would be turned in with the defendant's copy and the one requesting the favor would scratch

it out or I would have done it, or just let the five dollars be attached to it and Murray, as violations clerk, would scratch it out. In that case, the defendant wouldn't receive a copy of his receipt." (R. 13 (2) 367).

Officer Elwell was questioned by Assistant Prosecutor Kaplan in December, 1962. Mr. Kaplan stated:

"* * * Question, we have been following a certain pattern in this interrogation, and we will get to that. But, before we do, I want to advise you anything you say to me must be of your own free will, and without being the result of any threats, coercion, or promise of reward, and I advise you further you do have a right as any other citizen of New Jersey has, under our laws, the privilege to refuse to disclose any matter which may tend to incriminate you, and further with full knowledge of this right, if you make a disclosure pertaining to this investigation, you thereby waive this right or privilege with refrerence to any phase of this investigation that might involve you. Do you understand that? Answer, Yes sir. Question, Understanding that, you are willing to be interrogated? Answer, Yes sir." (R. 13(2) 363).

Mr. Elwell testified in detail as to the disposition of the altered tickets and the fines therefor (R.13(2) 363-371).

6. Donald Murray (R. 13(2) 355, 356)

"Q. [By Mr. Rigg]: Mr. Murray, as you know, I am working a Supreme Court order issued on the 30th of June, 1961, directing me to investigate certain irregularities in the handling of municipal traf-

fic matters in the Court, and by various members of the police department in Barrington. It is pursuant to that order that I ask you to come in here today and ask you questions. Before I do, I want to advise you that anything you say must be voluntary, and of your own free will, without any coercion or threat of promise or reward. I want to advise you also anything you say may be used against you or any person in any subsequent criminal proceeding in our courts in New Jersey. You do have a privilege to refuse to disclose any matters which you feel would tend to incriminate you. However, being aware of that, and if you make a disclosure, you waive that privilege or right, in relation to any matters pertaining to this investigation, there is one limitation of your privilege to the event (sic) that a proceeding may be brought against you under the laws of our state as a police officer, to have you removed from office if you refuse to answer my questions put to you pertaining to your official duties. Understanding this, Mr. Murray, do you wish to proceed this morning and answer the questions I put to you? A. Yes."

Murray testified that he was aware of the practice of altering tickets and had done so himself in "hardship" cases and possibly for a friend (R. 13(2) 356). He stated that he had neither received anything for altering a ticket nor altered without the defendant's knowledge (R. 13(2) 357).

Officer Murray was questioned by Assistant Prosecutor Kaplan in December, 1962. Mr. Kaplan's statement is as follows:

> "Question, * * * I want to advise you anything you say to me must be of course, of your own free will, and of course, without any threats, coercion or promise of reward. I'll advise you further that you do have, as every citizen has under the laws of New Jersey, the privilege to refuse to disclose any matter which may tend to incriminate you, and further with full knowledge of this, if you make any disclosure pertaining to this investigation, you thereby waive this right of privilege with respect to this investigation which might involve you. Are you willing to waive any immunity and proceeding to the questioning? Answer, Yes sir." (R. 13(2) 371).

He testified that the practice in Barrington was to have another officer change one of his (Murray's) tickets and vice versa (R. 13(2) 372-373). At the conclusion of his remarks, he stated that he was not coerced, mistreated or compelled to testify. He also said that he had come down after conferring with counsel (R. 13(2) 377).

c. The Trial

Both trials were held in the Camden County Court in 1963. The unreported decisions of that court appear in R. 13(1) 11 and R. 13(2) 336.

During the trial, the prosecution offered into evidence the statements of each defendant. The defense counsel objected to the statements on the grounds that they were not voluntary. Th court rejected defense counsel's objections and ruled that the statements were voluntarily given and admitted them into evidence (R. 13(1) 16-23, 28; R. 13(2) 338-343).

In both cases, the defendants testified in their own behalf, and gave testimony consistent with that introduced through their own statements.

Mrs. Naglee testified that she had altered tickets (R. 13(1) 250). She stated that the alterations were made in the ordinary course of the business day (R. (1) 237) at the request of Chief Garrity (R. 13(1) 251). Mrs. Naglee did not think there was anything wrong or improper about her changing the tickets (R. 13(1) 242).

Officer Virtue, in his testimony (R. 13(1) 256-277) enumerated the instances wherein tickets were altered. In one case, the change was motivated by a desire to give a girl a break inasmuch as she had two small children and her husband had left her (R. 13(1) 259). In another instance, a truck driver with six children was given a break (R. 13(1) 260). Other alterations were made because the officer felt there was insufficient evidence to support a charge of drunken driving (R. 13(1) 257). Virtue indicated that Chief Garrity was consulted on each alteration (R. 13(1) 261).

Chief Garrity's testimony (R. 13(1) 277-286; 288-311) was largely concerned with "donations" made to the police department by offenders. He testified that he went over the changes with the other officer (Virtue) before the changes were made (R. 13(1) 281). Hardship and the fact of not wanting to put a man out of work were the reasons Garrity advanced for the alterations (R. 13(1) 300, 302).

Officer Elwell's testimony (R. 13(2) 385-474) indicated that he thought nothing wrong of his altering tickets (R. 13(2) 404). He stated that changes were made when he later thought that he shouldn't have issued the ticket in the first place (R. 13(2) 401).

Lt. Holroyd indicated in his testimony (R. 13(2) 515-528) that it was the procedure, in the alteration of tickets, for the officer to go to the issuing officer to ask him if he would give the defendant a break (R. 13(2) 520). Much of Officer Murray's testimony (R. 13(2) 474-515) concerned the procedure for notation and disposition of fine payments. He also admitted to altering tickets (R. 13(2) 492).

The appellants were all found guilty as charged (R. 13(1) 312-313, 13(2) 552).

d. Opinions in the New Jersey Supreme Court

Appeals were filed by the appellants, and while these were pending in the Appellate Division of the Superior Court of New Jersey, the Supreme Court of New Jersey certified the matter on its own motion before argument in the Appellate Division (in both cases) (R. 13(1) 317; R. 13(2) 554).

The New Jersey Supreme Court heard the appeals in two separate cases: *State of New Jersey* v. *Naglee, et al.*, 44 N. J. 209, 207 A. 2d 689, reproduced at R. 13(1) 316-330 and *State of New Jersey* v. *Holroyd, et al.*, 44 N. J. 259, 208 A. 2d 146 reproduced at R. 13(2) 553-558.

Since the decision in the *Holroyd* case on the question presented was based on the reasoning of the *Naglee* case (R. 13(2) 557) only the *Naglee* case will be discussed herein.

The Court set down the test for voluntariness as being a consideration of the totality of the circumstances to determine whether the declarants were rendered incapable of freely exercising their wills (R. 13(1) 321, 322). In applying this test to the facts of the case, the Court could find no such physical or mental coercion (R. 13(2) 323).

On the contention that the Deputy Attorney General's mention of the possibility of employment forfeiture constituted a "threat", the Court said that the statute was not referred to in that the advice merely consisted of the possibility of being subjected to proceedings for removal. The court went on to state that a police officer refusing to cooperate in a proper investigation is acting inconsistent with his police duties and may therefore be subject to subsequent dismissal proceedings. A discharge based upon such refusal to cooperate is not predicated upon inference of guilt but upon the failure to cooperate (R. 13(1) 324, 325).

The Court further held that the defendants were in no position to challenge the constitutionality of the statute (N.J.S. 2A:81-17.1) since the statute's invocation was not expressly threatened, and because such a dismissal would be proper even in the absence of such a statute (R. 13(1) 327).

Concluding on the arguments raised in the appeal, the Court held that while the State cannot require an employee to forego the exercise of a constitutional right, it is reasonable for the state, in a proper proceeding, to dismiss a police officer for refusal to answer questions pertaining to his official position in an investigation such as the one conducted here (R. 13(1) 327-328).

In the *Naglee* case, the defendants further contended that the statements were involuntary because neither Mr. Rigg nor Mr. Kaplan advised them of their right to counsel* (R. 13(1) 326). (This issue is not raised on this appeal.) The court considered this an element bearing on

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* In the *Holroyd* case, the defendants gave their statements in the presence of their lawyer (R. 13(2) 558).

voluntariness but concluded that since the defendants were law officers and aware of their rights and since there was no suggestion that counsel would have been denied if requested, that it did not render their statements involuntary. Further, Chief Garrity told Mr. Rigg that he had arranged for counsel, but he didn't think it necessary at this point (R. 13(1) 326).

The Question of Jurisdiction

This Court reserved the question of jurisdiction of this appeal. 383 U. S. 941. The question of appeal jurisdiction must, therefore, now be treated. See Rule 16(4) of this Court's rules. The appeal jurisdiction invoked by the appellants, 28 U. S. C. A. §1257(2) (1966) provides as follows:

> "By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

Appellants point out correctly that for appeal jurisdiction to lodge it must appear (1) that the federal constitutional validity of a state statute must have been drawn in question in the court below, and (2) that the decision below must necessarily have involved an adverse resolution of the constitutional issue (Ab19-20).

These ingredients are not present in the present proceedings. No question has been raised or resolved concerning the constitutional validity of a state statute, i.e., N.J.S. 2A:81-17.1, N.J.S.A. (Supp. 1965). But, to the extent that the state statute was indirectly—even remotely—involved, the court's interpretation of the laws of the state comports with federal constitutional standards.

In this appeal there is *not* involved any question pertaining to the removal, dismissal or discipline of any of the appellants by virtue of the New Jersey statute, N.J.S. 2A:81-17.1, *supra*. The New Jersey Supreme Court in the decision below found correctly and accurately that the statute challenged had not been invoked and its application was not in issue. *State* v. *Naglee*, 44 N. J. 209, 223, 207 A. 2d 689 (1965).

Appellants assert, however, that the New Jersey statute was indirectly involved. The indirect use of the New Jersey statute is said to inhere in advice given by the Deputy Attorney General in the course of his questioning of the appellants in an official proceeding relating to their public offices. The statute was never mentioned. Moreover, the advice given was not in the terms of or according to the literal provisions of the statute. It does not matter what was in the mind of the Deputy Attorney General propounding these questions. What does matter is what he said to the appellants. And, what he stated to them was *not* the terms or literal effect of the New Jersey statute, but rather the effect of New Jersey law in general with respect to the obligations of a public employee to cooperate with law enforcement authorities in connection with official proceedings relating to their offices.

Even if it be assumed that the advice given to appellants is derived from the New Jersey statute, it is clear that this statement of law would not violate the Federal Constitution. The interpretation of the New Jersey law by the court below comports with due process standards. Thus, the New Jersey Supreme Court determined specifically that it is the law in the State of New Jersey that a public employee may not be dismissed summarily or automatically as a result of his reliance upon the privilege

against self-incrimination or by an inference of guilt drawn from the privilege against self-incrimination, but that he may be dismissed or removed from office in an appropriate proceeding for his failure or refual to testify where this failure or refusal imply rather a lack of fitness for office. (See Point I, B, *infra*.) To the extent that the New Jersey statute is in any way involved, it has been thus interpreted by the New Jersey Supreme Court, and this interpretation demonstrates its constitutional validity under federal standards. The construction of the New Jersey Supreme Court should be recognized by this Court. *Nelson* v. *County of Los Angeles*, 362 U. S. 1. Appellants' efforts, therefore, to characterize the New Jersey statute as being unconstitutional disregard the State court's contrary determination of the New Jersey law and should not be given credence by this Court as a basis for appeal jurisdiction. *Anonymous* v. *Baker*, 360 U. S. 287; *Lerner* v. *Casey*, 357 U. S. 468.

By virtue of 28 U. S. C. A. §2103 (1959), appeal from a State court improvidently taken may be regarded as a writ of certiorari. Rule 19 of the Rules of the United States Supreme Court, 28 U. S. C. A. (Supp. 1965) provide a guideline for the exercise of review on certiorari:

> "A review on a writ of certiorari is not a matter of right, but of sound juridical discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:
>
> (a) where a state court has decided a Federal question of substance not theretofore determined by this court, or has decided it in a way

probably not in accord with applicable decisions of this Court."

Cf. Rice v. *Sioux City Memorial Park Cemetery,* 349 U. S. 70, 38.

The questions presented on this appeal are neither unique nor of special importance. Similar issues have been considered in other cases. *Regan* v. *New York,* 349 U. S. 58; *Stevens* v. *Marks,* 383 U. S. 234; *cf. Slochower* v. *Board of Education,* 350 U. S. 551.

In the *Regan* and *Stevens* cases, *supra,* this Court considered situations comparable to the instant case without questioning the underlying power of a state to dismiss an officer upon his refusal to testify concerning his official duties.

In *Slochower,* the court struck down a dismissal on the grounds that the inquiry at which Slochower relied on his privilege against self-incrimination to remain silent was not connected with his official duties and was summary in nature. Had the inquiry been in connection with his official duties, or had there been a hearing or opportunity to be heard, there would have been no objection. A dismissal based on lack of fitness for office evidenced by refusal to testify may be proper. *Nelson* v. *County of Los Angeles, supra; Lerner* v. *Casey, supra.* In the instant case the investigation was *solely* concerned with the conduct of official duties, and the New Jersey Supreme Court made it clear that dismissal in such circumstances cannot be automatic.

Since the inherent power of a state to discharge upon failure to so testify is neither a novel question in this court, nor in conflict with any decision of this court, the court should decline to entertain the petition of certiorari.

The appellants in their brief (Ab28) raise questions as to the voluntariness of the statements. Reference is made to *Miranda* v. *Arizona*, 384 U. S. 436, among other cases. These cases deal with the problems of incommunicado interrogation in custodial situations and prescribe the safeguards necessary for a meaningful protection of the privilege against self-incrimination. They are factually remote from the present case.

The facts of the instant case demonstrate that the atmosphere of the investigation was conducted with full candor and fairness. Each defendant was fully apprised of his rights and privileges. It is ironic that the appellants' main contention of involuntariness is the fact that they were fully apprised of their legal status—the very mandate of this Court.

Inasmuch as there exists no novel question of law, no suspicious or ominous pattern of official interrogation, no conflict of authorities, and this Court's highest standards of disclosure were adhered to, there is no sound reason for this Court to exercise its certiorari jurisdiction.

Summary of Argument

In these consolidated cases the appellants have been convicted under N.J.S. 2A:98-1 for conspiracy to pervert and obstruct the due administration of the Motor Vehicle Traffic Laws of the State of New Jersey. The gravamen of the crime was "ticket fixing". All of the appellants at the time of the alleged commission of the crime were police officers employed by New Jersey municipalities. One of the defendants, Helen Naglee, now deceased, was a violations clerk. In official investigations preceding their indictments each of the appellants made incriminating statements. In making these statements initially the appellants

were advised of their privilege against self-incrimination, that their testimony must be voluntary and that it could be used against them. They were also advised that as public officials their failure to testify could subject them to proceedings for removal from public employment. Three of the six appellants had counsel present; one had previously conferred with counsel; none were denied an opportunity to retain counsel and none now raise any question relating to the right of counsel.

At a subsequent stage of this official investigation, more than one year later, appellants were again questioned. They gave similar testimony with respect to their "ticket fixing" activities after being advised of their right to invoke the privilege against self-incrimination; but they were not at this time told specifically of the possibility of their being subject to removal proceedings for failure to testify. At the trial itself appellants voluntarily took the stand and testified with respect to the circumstances of the crimes involved. Their testimony at the trial was also incriminatory.

By way of argument, several points are developed. It is recognized that public employees, involved in law enforcement and in the prosecution of the criminal laws undertake the performance of their public duties subject to the highest standards of conduct. A State has the prerogative in the exercise of its police powers for the protection of society to impose reasonable restrictions and conditions for the holding of public office.

A public employee, such as a police officer, intimately involved in the day-to-day administration of the criminal laws, has a duty and obligation to cooperate with law enforcement authorities. The duties of a police officer entail the obligation to testify fully and frankly as to matters

pertaining to his office or official activities in connection with official proceedings.

Public officials, such as police officers, enjoy in common with all individuals federal and state constitutional rights. For this reason, a public employee may not, consistent with due process, be summarily or automatically removed from office based solely upon an inference of guilt derived from a refusal to testify under the Fifth Amendment in official proceedings. Such employee may, nevertheless, be removed from office or suffer other civil penalties where his refusal to testify evidences a lack of fitness for the holding of public office. Such removal, under appropriate circumstances, is within the sound discretion of the State and does not involve a denial of due process or the impairment of constitutional rights.

The laws of the State of New Jersey applicable to public employees, and to police officers in particular, are consistent with these established principles. Numerous decisions in the State of New Jersey recognize that police officers are subject to the most scrupulous standards of personal and official conduct. Implicit in their obligations is the duty to cooperate fully with law enforcement authorities. This includes a duty on the part of a policeman to testify frankly and completely in an official proceeding inquiring into his office or activities. Under New Jersey laws, a police officer failing in such duty may be subject to removal from office; such removal may occur only in an appropriate proceeding for that purpose and may be based, not upon an inference of guilt with respect to the subject matter of the investigation, but only upon his lack of fitness to be a police officer because of his refusal to cooperate.

A local police officer, who is asked to testify in an investigation of his office and official activities and is fully advised that he has a constitutional privilege to refuse to testify, that if he testifies he must do so freely and voluntarily and that any testimony he gives may be used against him or any other person in a criminal proceeding, may also be informed that a failure to testify could subject him to proceedings for discharge or removal from office. Such advice given freely and openly, where the individual has retained counsel or has been given the opportunity to obtain counsel, does not carry with it any inherent element of threat or coercion. If, therefore, testimony is given voluntarily by a police officer in such proceedings, it may be used in a criminal proceeding in which he is a defendant.

In the final analysis the inquiry must turn upon whether in point of fact self-incriminating testimony is voluntary and not the result of an intimidated or overborn will. The record in these appeals demonstrates convincingly that the appellants testified voluntarily with complete comprehension of their legal rights. The advice which they originally received in the course of their questioning carried with it no inherent threat. The manner of questioning was eminently fair. The appellants understood that their testimony must be volitional. They had the benefit of counsel or the opportunity to obtain counsel. Subsequently, in the course of this same investigation and at their trial the appellants again testified freely without any threats or coercion. Under the totality of the circumstances it appears convincingly that the appellants' testimony in the proceedings below was voluntary and its admission into evidence did not constitute a denial of due process under the Fourteenth Amendment.

It is further argued that the proceedings below resulting in the convictions of the several appellants did not in-

volve a deprivation of due process under the Fourteenth Amendment to the United States Constitution by virtue of the fact that the highest court of the State of New Jersey intiated the original investigations into the appellants' activities. The Supreme Court of New Jersey has jurisdiction over and responsibility for the administration of the state judiciary. This entails the supervision of the judicial machinery of the State and in particular, the conduct of the local criminal courts and the issuance and disposition of traffic tickets. The actions of a State court in policing the internal administration of its court system does not, without more, disqualify it from acting judicially in reviewing criminal convictions where there has been complete adherence to all of the due process rules of criminal procedure. Moreover, there is no factual basis whatsoever that the New Jersey Supreme Court because it initiated an investigation into the municipal courts of which the appellants were officers that it was prejudiced or biased in its judicial review of the resultant convictions.

The appellants have not in any of the proceedings below raised an objection that there was a denial of fundamental due process because the New Jersey Supreme Court initiated the original investigation. They cannot, for the first time on this appeal, raise this issue.

ARGUMENT

POINT I

Testimony of a police officer given voluntarily in an official investigation relating to his duties, after he has been fully apprised that he can refuse to testify, that his testimony must be of his own free will, that his testimony could be used against him in a criminal proceeding and that his refusal to testify might subject him to removal from office in a proper proceeding, is admissible in a criminal proceeding in which he is a defendant and does not result in a denial of the privilege against self-incrimination under the Fourteenth Amendment.

A. A police officer is subject to strict standards of conduct and is under a solemn duty to enforce the criminal laws and to cooperate fully in the administration of justice.

The individual appellants in each of these consolidated cases were, at the time of their respective convictions, public employees intimately and vitally associated with the enforcement of state and local criminal laws. The appellants, Holroyd, Elwell and Murray, were all members of the Police Department of Barrington, N. J. Holroyd was a police lieutenant; Elwell and Murray were patrolmen and at one time or another had served in the position of violations clerk for the local municipal court. The appellants, Garrity, Virtue and Naglee (now deceased), were similarly employed by the municipality of Bellmawr, N. J. at the time of the alleged commission of the crimes for which they were convicted. Garrity was the Chief of Police, Virtue was a police detective, and Mrs. Naglee was the municipal court or violations clerk.

There is no position in public employment more directly related to the safety and welfare of society than that of the local police. Local police, in a most vital sense, occupy a position of singular responsibility for the enforcement of the criminal laws and the administration of justice on behalf of society.

The State of New Jersey, as a matter of its public policy and in the exercise of its police powers for the protection of its citizens, has imposed upon police officers the highest standards of personal and official conduct. In *Moorestown Tp.* v. *Armstrong,* 89 N. J. Super. 560, 566, 215 A. 2d 775, 778 (App. Div. 1965), *cert. den.* 47 N. J. 80, 219 A. 2d 417 (1966) it was stated:

> "It must be recognized that a police officer is a special kind of public employee. His primary duty is to enforce and uphold the law. He * * * is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public, * * *."

In *In re Emmons,* 63 N. J. Super. 136, 141, 164 A. 2d 184, 187 (App. Div. 1960) it was stated:

> "An officer cannot complain that he is being held up as a model of proper conduct; it is one of the obligations he undertakes on voluntary entry to the public service. His obligations are greater if he desires to maintain his position as a police officer."

And in an earlier case, *Martin* v. *Smith,* 100 N. J. L. 50, 52, 125 Atl. 142, 143 (Sup. Ct. 1924):

> "The police department of our cities, however, is built upon a plane of public efficiency, which has ordinary truth and morality as its face, and when these essentials of public probity be lost, the department shall have lost not only the confidence of the community, but the fundamental mainstay and support which is necessary to its effective and satisfactory operation."

A police officer occupies a unique position in society and stands in the public eye as an upholder of that which is morally and legally correct. He is not free to engage in any conduct which tends to reflect adversely upon and impair the morale and discipline of the police force even though not related directly to the performance of his official duties. *In re Cohen,* 56 N. J. Super. 502, 507, 153 A. 2d 708, 711 (App. Div. 1959); *Herbert* v. *Atlantic City,* 87 N. J. L. 98, 101, 93 Atl. 80, 81 (Sup. Ct. 1915). It is not surprising, therefore, to find that conviction of a police officer for downgrading and altering traffic tickets is inconsistent with "honorable service" and may result in the forfeiture of pension rights. *Fromm* v. *Bd. Directors of Police, etc., Retire. Syst.,* 81 N. J. Super. 138, 195 A. 2d 32 (App. Div. 1963).

These decisions and principles are not unique to New Jersey. There has been universal recognition of the proposition that the police officer occupies a special and critical status in society, and the obligations of his office reflect the importance of this trust. In the landmark decision of *McAuliffe* v. *City of New Bedford,* 155 Mass. 216, 29 N. E. 517 (1892), the court recognized that policemen must forego certain ordinary political rights in order to retain their jobs. The right of a policeman seeking funds for political purposes, it was said, might lead to an impairment of his

effectiveness as a police officer because the public trust vested in him would be lessened. The court through Holmes, *J.*, stated at 29 N. E. at 517:

> "The petitioner may have a constitutional right to talk politics but he has no constitutional right to be a policeman * * * [T]he city may impose any reasonable condition upon holding office within its control. This condition seems to us reasonable."

The regulation of public employees to assure the proper discharge of their trust is a matter of state responsibility. The states may impose reasonable restrictions upon individuals in public employment not otherwise applicable to private citizens. "The terms and conditions of public service in office or employment rest in legislative policy * * *." *Spina* v. *Consolidated Police, etc., Pension Fund Com.*, 41 N. J. 391, 400, 197 A. 2d 169, 173 (1964). The restrictions upon individuals in public employment may well result in the curtailment of ordinary rights where the pursuit of these rights is inconsistent with the discharge of official duties or detrimental to the public weal. In *United Public Workers* v. *Mitchell*, 330 U. S. 75, for example, the dismissal of federal civil service employees for violation of the Hatch Act by engaging in political activity was upheld. The court said that the Bill of Rights is not absolute and that Congress can within reason regulate government employees. Congress has the power to shield the public from the potential danger of partisan political activities by public employees. Public employees have a special status—a public trust—which requires them to refrain from exercising certain of their political rights. *Pfitzinger* v. *United States Civil Service Commission*, 96 F. Supp. 1, 3 (D. C. N. J. 1951), *aff'd* 192 F. 2d 934 (3rd Cir. 1951); *McAuliffe* v. *City of New Bedford, supra.*

It cannot be overemphasized that public employment is a privilege in the nature of a trust. Public employees function as the servants of the people and they may, therefore, be required to perform their duties under the highest ethical standards of official and personal conduct. It is within the discretion of the states, in the exercise of their police powers, to formulate and apply these standards. Especially is this true of police officers performing the vital, difficult and indispensable task of enforcing and administering the criminal laws.

B. A police officer has the duty to testify fully and frankly in official proceedings relating to his office and his failure to so cooperate, in appropriate circumstances, reflects a lack of fitness for public office, is inconsistent with his public duties and constitutes a justifiable basis for his removal in proper proceedings.

1. General principles

The privilege against self-incrimination, sacred as it is, does not stand as an insurmountable obstacle to the reasonable regulation of individuals invested with a public trust or enjoying special privileges granted by government. Government, both federal and state, is competent to condition the exercise or enjoyment of special privileges upon the curtailment or limitation of the privilege against self-incrimination. *E.g. Maryland* v. *Soper,* 270 U. S. 9 (the right to invoke the protection of federal statutes to allow a federal officer to be tried in a federal court for a state offense entails abandonment of right to refuse to testify); *Kaufman* v. *Hurwitz,* 176 F. 2d 210 (4th Cir. 1949) (a discharge in bankruptcy may be withheld where debtor invokes privilege against self-incrimination); *Shapiro* v. *United States,* 335 U. S. 1, (a person required to keep records may not withhold their production under the privi-

lege against self-incrimination); *Orloff* v. *Willoughby*, 345 U. S. 83, *rehearing den.* 345 U. S. 931 (a medical doctor may be refused a military commission otherwise provided by special statute if he has invoked the privilege against self-incrimination); *Cohen* v. *Hurley*, 366 U. S. 117 (an attorney who relied upon the privilege against self-incrimination in a disciplinary hearing could be disbarred under state constitutional standards where the disbarment order was predicated not upon any unfavorable inference drawn from petitioner's assertion of the privilege nor upon any purpose to penalize him for its exercise, but solely upon his refusal to discharge obligations which, as a lawyer, he owed to the court); *In the Matter of Spevack*, 16 N. Y. 2d 1048, 213 N. E. 2d 457 (1965), *remittitur amended*, 17 N. Y. 2d 490, 214 N. E. 2d 373 (1966), *cert. granted* 383 U. S. 942 (No. 944, 1965 Term; renumbered No. 62, 1966 Term) (under the Fifth Amendment, made applicable by the Fourteenth Amendment in *Malloy* v. *Hogan*, 378 U. S. 1, an attorney could be disbarred for refusal to testify and produce records in a professional proceeding, the court stating: "[A]n attorney, like any other citizen had an absolute right to invoke his constitutional privilege against self-incrimination and to refuse to supply pertinent information, but that, when he did so, he failed in his inherent duty to the court to divulge all pertinent information necessary to show his character and fitness to remain a member of the Bar and necessary to proper administration of justice and must therefore forfeit his privilege to remain a member of the Bar." 214 N. E. 2d 373); *cf. United Electrical Radio & M. Wkrs.* v. *General Elec. Co.*, 127 F. Supp. 934 (1954), affirmed in part and reversed in part on other grounds, 231 F. 2d 259 (D. C. Cir. 1956), *cert. den.* 352 U. S. 872.

Where the special privilege granted by the state involves the holding of public office, the state's power to condition this upon the curtailment of the privilege against self-incrimination in appropriate circumstances is even more compelling. Many states have articulated this policy by specific statutory enactments. *E.g.*, N.J.S. 2A:81-17.1, N.J. S.A., (Supp. 1965) (New Jersey); N. Y. Const. Art. 1, §6 (Supp. 1965) (New York); New York City Charter, §1123 (1963); La. Const. Art. 14, §15 (P)(1) (1955) (Louisiana); D. C. Code §1-319a (Supp. 1961) (District of Columbia); Cal. Ann. Code, §18676-7 (1945) (California); Revised Laws of Hawaii, 1 §5-4 (1955); Md. Ann. Code, 69 §11 (1957) (Maryland); V. A. M. S. §36.410 (1951) (Missouri); 5 U.S.C. §2283 (1965) (United States). It is a policy founded upon the trust which must necessarily be reposed in public officials.

> "Surely nothing can be more self-evident than that he who accepts a public trust should be ready at all times to welcome the fullest investigation of his official conduct and to give to the authorized investigator his fullest cooperation." Mayers, *Shall We Amend The Fifth Amendment* 151-152 (1959).

It is well within the power of a state to remove, dismiss or otherwise discipline a public employee for failure to testify in response to questions in the course of official investigations relating to the conduct of the public office or the performance of official business where such refusal or failure bespeaks of a want of capacity or a lack of fitness for public office. *Beilan* v. *Board of Education*, 357 U. S. 399; *Lerner* v. *Casey, supra; Nelson* v. *County of Los Angeles, supra; cf. United States* v. *Warden of Wallhill Prison*, 246 F. Supp. 72 (S. D. N. Y. 1965), aff'd *per curiam* 355 F. 2d 208 (2d Cir. 1966).

The inherent prerogative of a state to assure scrupulous conduct by its employees is particularly manifest with respect to police officers and law enforcement officials. Clearly implicit in the obligations of police officers is the duty, when called upon in connection with investigations, inquiries or official proceedings related to their offices or to their official activities, to testify fully and frankly. Anything short of complete candor on the part of policemen is inconsistent with their duty to be above reproach or suspicion in the enforcement of the criminal laws, is inimical to their public trust and subversive of the confidence reposed in them by society.

Numerous decisions illustrate this. In *Callahan* v. *New Orleans Police Dept.*, 171 So. 2d 730 (La. Ct. App. 1965), the appellant was suspended and later dismissed from employment with the New Orleans Police Department. The letter of dismissal set forth in detail a number of specific charges including several charges of acceptance of "payoff" money. At his hearing appellant refused to testify. The court upheld validity of La. Const. Art. 14 §15(P)(1) under the Federal Constitution. It stated:

> "The paramount interest of the public in the area of law enforcement is so obvious that further comment seems unnecessary. A police officer who refuses to cooperate with the proper authority of the city by which he is employed; who refuses to give information within his knowledge; or who impedes or hinders the inquiry by the proper authorities into violations of the law which he has sworn to uphold and defend, is no longer of any value to the city as a police officer. Any law which declares and renders such officer disqualified from continuation in public service is within the limits of the reasonable

exercise of the police, power of the State and not violative of due process (Citation omitted.)

> "Sergeant Callahan has no inalienable right to employment as a police officer; hence the paramount right of the people of the City of New Orleans to protection against law violation far transcends any right Callahan has to employment in a position, for which, by his actions, he has demonstrated his unfitness and disqualification." 171 So. 2d at 737. Also, *Fallon* v. *New Orleans Police Dept.*, 238 La. 531, 115 So. 2d 844 (1959).

In a recent California case, the court upheld the dismissal of state police officers who refused to take a polygraph test which they were asked to take in the court of an investigation of their official conduct. *Fichera* v. *State Personnel Board,* 217 Cal. App. 2d 613, 32 Cal. Rptr. 159 (Dist. Ct. of App. 1963). The court said that although the results of the polygraph test could not be admissible as evidence, it could have been used as an aid to channel the investigation. By not undergoing the test the police violated their public trust. The court, reasoning from earlier decisions, explained the reason for their dismissal:

> "* * * [T]he basis was the need for confidence of the public in officers who have sworn to uphold and enforce the laws, which require officers, under certain circumstances, to risk self-incrimination, not in defense of accusation of criminal conduct, but in the course of maintaining their positions." 32 Cal. Rptr. at 163.

Similarly, in *Christal* v. *Police Commission,* 33 Cal. App. 2d 564, 92 P. 2d 416 (Dist. Ct. of App. 1939), police officers refused to answer questions before a grand jury con-

ducting an investigation to determine whether such officers had been guilty of criminal activities in connection with their duties. The court held that the officers' conduct was inconsistent with the duties of their office and constituted "cause" for dismissal as well as "conduct unbecoming an officer." The dismissal of police officers on the ground of conduct unbecoming an officer based on the officers' refusal to sign immunity waivers when they were called before a grand jury in connection with a suspected conspiracy to obtain an unfounded indictment of certain persons for murder was also upheld in *Drury* v. *Hurley,* 339 Ill. App. 33, 88 N. E. 2d 728 (1949), *cert. den.* 339 U. S. 983. This decision was followed in *Moretti* v. *Civil Service Bd.,* 2 Ill. App. 2d 89, 118 N. E. 2d 615 (1954). Also, *Souder* v. *Philadelphia,* 305 Pa. 1, 156 A. 245 (1931); *Miami* v. *Jervis,* 139 So. 2d 513 (Fla. D. S. A. 1962); *Canteline* v. *McClellan,* 282 N. Y. 166, 25 N. E. 2d 972 (Ct. App. 1940); *Scholl* v. *Bell,* 125 Ky. 750, 102 S. W. 248 (Ct. App. 1907).

Slochower v. *Board of Public Educ., supra,* and *Steinberg* v. *United States,* 163 F. Supp. 590 (Ct. Cl. 1958), relied upon by appellants, do not represent a contrary doctrine. They articulate a refinement, however, with respect to the manner in which government can discipline or dismiss public employees. In *Slochower* it was held only that the *summary* dismissal without a hearing of a New York City teacher for invoking the Fifth Amendment before a federal committee was arbitrary and lacking in due process. In *Steinberg* the court felt that it was an arbitrary assertion of legislative power to withdraw the annuity of a retired employee under 5 U.S.C.A. §2283 for merely availing himself of the privilege against self-incrimination. But see, Note, 27 *Geor. Wash. L. Rev.* 382, 387 (1958).

These decisions chart a perimeter within which a state must confine its disciplinary powers over its public em-

ployees. What falls beyond this due process boundary is an arbitrary or capricious dismissal, evidenced by the automatic or summary removal from office without a hearing or appropriate opportunity to be heard, where the only factor present is a refusal to testify and an inference of guilt drawn from this bare refusal. *Gardner* v. *Murphy*, 46 Misc. 2d 728, 260 N. Y. S. 2d 739 (Sup. Ct. Spec. T. 1965); *Conlon* v. *Murphy*, 24 A. D. 2d 737, 263 N. Y. S. 2d 360 (1965). In *Koutnik* v. *Murphy*, 25 A. D. 2d 197, 268 N. Y. S. 2d 265 (1966), however, the court stated that under certain circumstances a discharge without a hearing may not be arbitrary. ("Surely if expedition is anywhere advisable it is where those who have been entrusted with the protection of the flock take the side of the wolves", 268 N. Y. S. 2d at 267.)

This Court itself has recognized that *Slochower* does not deprive the states of their inherent power to discipline public employees where the refusal or failure to testify reflects a lack of fitness for office. *Beilan* v. *Board of Education, supra*. *Lerner* v. *Casey, supra*, involved the dismissal of a Transit Authority policeman who used the Fifth Amendment when questioned by his employer. The policeman was advised that he might lose his job if he continued to rely on his Fifth Amendment privilege. The Court noted that the dismissal was predicated on the impairment of his trust and reliability based on lack of candor in refusing to answer questions relevant to his job put to him by his employer. This doubt justified his dismissal independently of the petitioner's reason for silence. In *Nelson* v. *County of Los Angeles, supra*, this court upheld the dismissal of state social workers who had refused to answer questions before a congressional sub-committee after having been requested to do so by their superiors. The petitioner therein argued that his discharge was sum-

mary and based upon an invocation of his rights under the First and Fifth Amendments. The Court distinguished *Slochower* by pointing out that there the discharge of a city employee stemmed from an inference of guilt based upon the use of the Fifth Amendment.

> "But the test here, rather than being the invocation of any constitutional privilege, is the failure of the employee to answer. California has not predicated discharge on any 'built-in' inference of guilt in its statute, but solely on employee insubordination for failure to give information which we have held that the State has a legitimate interest in securing." 362 U. S. at p. 7.

It is thus generally recognized that there is an obligation upon persons in public employment to cooperate completely with government and to testify fully in official proceedings relating to their duties and activities. This obligation is particularly manifest with respect to police officers who hold positions of great public trust. Refusal to cooperate on the part of a police officer is not a crime nor does it imply he has committed a crime. Such conduct, however, is "unbecoming an officer." Ratner, Consequences of Exercising the Privilege Against Self-Incrimination, 24 U. Chi. L. Rev. 472, 503 (1957); Annot., 44 A. L. R. 2d 789 (1955). A state may in appropriate proceedings remove or dismiss such employees who fail to meet these standards and thereby demonstrate unfitness for public office.

2. *The law of the State of New Jersey*

The New Jersey legislature has evinced a specially strong concern with respect to assuring the fullest degree of cooperation and exemplary conduct on the part of public employees in connection with their offices. *E.g.* N.J.S. 2A:81-

17.1, N.J.S.A.; N.J.S.A. 40:69A-167; N.J.S.A., Acts Saved From Repeal, 40:103-5(92).

The purpose of the statutes is to assure the performance of public duties in accordance with the highest ethical standards. This was the explicit intent of the New Jersey legislature in passing N.J.S. 2A:81-17.1. New Jersey Statutes 2A-3A, 1965 Cum. Pocket Part p. 141 (L. 1953, c. 259) (Assembly Bill No. 607).

On their face the New Jersey statutes might appear to require an automatic, mandatory forfeiture of employment upon the refusal of a public employee to testify in an official proceeding relating to his office. If this were the necessary effect of the New Jersey statutes, they might well be suspect under the decisions prohibiting summary dismissals based solely upon an inference of guilt drawn from a refusal to testify. It is for this reason that appellants urge strenuously, but inaccurately, that the New Jersey statute, N.J.S. 2A:81.17.1, N.J.S.A. his this force and effect. It does not.

Preliminarily, it is observed that the New Jersey statute is not involved in these appeals. No issue is presented concerning any discharge, removal or discipline of any of the appellants under the New Jersey statute. The New Jersey Supreme Court considered whether the advice given by the Deputy Attorney General to the appellants in the course of their questioning was a reasonable and accurate statement of the New Jersey law. The Court noted that the statute was neither referred to by name nor quoted, nor even paraphrased. The advice was merely:

> " 'This right or privilege [of refusing to answer on the ground of self-incrimination] that you have is limited to the extent that you as a police officer once sworn and asked questions pertaining to your office

> and your conduct therein, if you refuse to answer, you may then be subject to a proceeding to have you removed from the department.'" 44 N. J. at 221, 207 A. 2d at 693.

The Court then set forth its understanding of the power of a state to discipline an employee where his reliance upon the privilege of self-incrimination is incompatible with his office.

> "As policemen, Garrity and Virtue held sensitive positions in regard to reporting and prosecuting violations of the law. Surely, a police officer who refuses to cooperate in a proper investigation of his official conduct is acting inconsistently with his police duties. He is therefore properly subject to subsequent dismissal proceedings. (Citations omitted.) The obligation to cooperate does not depend on the existence of a statute or rule. It is intrinsic to the position of a police officer. (Citations omitted.) It is to be noted that the above cases recognize the right of a policeman to assert his privilege against self-incrimination; but he may be discharged for doing so. A subsequent discharge is not predicated upon an inference of guilt from the police officer's refusal to testify, but upon his failure to cooperate in a situation where his duty compels cooperation. See the discussion in Ratner, 'Consequences of Exercising the Privilege Against Self-Incrimination,' [*supra*], at pp. 503-504." 44 N. J. at 221-222, 207 A. 2d at 695-696.

Again:

> "The defendants in their brief have made a point which we have not previously discussed. They con-

tend that a public official may not be subjected to a penalty (here the loss of employment) because of the exercise of a legal right (here the constitutional right to refuse to answer questions on the ground that the answers would be self-incriminatory). But there are situations where a public official's right to retain his position may properly depend upon a willingness to forego a constitutional right to the extent that the exercise of such a right may be inconsistent with the performance of the duties of his position. For example, a member of the judiciary of this State cannot engage in partisan political activity.

"The question is not whether the State can require an employee to forego the exercise of the constitutional right. Of course it cannot. The question is whether the State's requirement that a given employee forego a given constitutional right as a condition of continued employment is *reasonable*. We need not now determine whether it would be reasonable for the State, under other circumstances, to dismiss employees holding other public positions because they refuse to answer questions on the ground of self-incrimination. See Ratner, *supra*, at pp. 504-511. We think it reasonable, however, for the State, in a proper proceeding, to dismiss a police officer for refusal to answer questions pertaining to his official position in an investigation such as the one conducted here." 44 N. J. at 223-224, 207 A. 2d at 697.

The New Jersey courts have made it crystal clear that the dismissal or removal of a public employee for a violation of the New Jersey statutes imposing a duty to testify in official proceedings cannot be mandatory or auto-

matic. In an analogous situation, *Newark* v. *Dept. of Civil Service*, 68 N. J. Super. 416, 172 A. 2d 681 (App. Div. 1961), it was held that even though N.J.S.A. 40:69A-167 made it mandatory that a public employee forfeit his office, he could be removed only upon a proper administrative adjudication after due notice and hearing.

The refusal to testify as a basis for removal is not founded upon an inference of guilt but rather upon a lack of fitness for the office.

In *In Appeal of Emmons, supra*, 63 N. J. Super. 136, 164 A. 2d 184, where it was held that the suspension from the police force of a police officer for his failure to submit to a sobriety test or to answer questions regarding his involvement in an automobile accident while off duty did not violate his constitutional due process or his statutory privilege against self-incrimination. The New Jersey court pointed out that the issue was not whether the officer had a right to exercise a constitutional privilege but whether his refusal to cooperate in the investigation was a breach of his public trust. Also, *Laba* v. *Newark Board of Education*, 23 N. J. 364, 129 A. 2d 273 (1957). (A teacher risked dismissal if, during an inquiry into his fitness, he declined to answer pertinent questions.)

It is to be emphasized that, while the New Jersey statute was not involved, the New Jersey Supreme Court's interpretation of the applicable state law should be recognized and accepted by this Court. *Nelson* v. *County of Los Angeles, supra; Spector Motor Co.* v. *McLaughlin*, 323 U. S. 101; *Albertson* v. *Millard*, 345 U. S. 242; *Cramp* v. *Board of Public Instruction*, 368 U. S. 278. In all respects the law in the State of New Jersey comports with the general constitutional principles established in this area. *Nelson* v. *County of Los Angeles, supra.*

The abundance of authority recognizing and confirming the proposition that under appropriate circumstances a public employee may be discharged for invoking the privilege against self-incrimination in response to inquiries relating to his public office is ample testimonial to the efficacy and need for the rule.

> "There is little doubt that the state can dismiss certain types of employees for exercising constitutional privileges where the exercise of such a privilege is incompatible with the duties of the office in question, and it is conceivable that the exercise of the self-incrimination privilege would in some instances be incompatible with certain offices." Note, *Mandatory Dismissal of Public Personnel and the Privilege Against Self-Incrimination.* 101 U. Pa. L. Rev. 1190, 1201 (1953).

This notion does not involve any deprecation of the privilege against self-incrimination. Rather it revolves around the unique status of public employees as the instrumentalities of government against which the privilege against self-incrimination has been created as a protection. The citizen is entitled to the protection of the privilege against an over-zealous or over-reaching government. *Rogers* v. *Richmond,* 365 U. S. 534, 541. But while the public employee who actually effectuates that government's policy may invoke that privilege, his lack of candor in matters official may be shown to be a breach of his public trust in a proper proceeding. It has been suggested as incongruous "when the individual invoking protection against the all powerful state has recently or perhaps still is, himself an agent of that same state, now suspected of abusive power to the injury of his fellow citizens." Mayers, *op. cit. supra* at 166.

Nowhere does this principle of self-government have greater pertinency than with respect to police officers and other public employees intimately involved with the enforcement and administration of the criminal laws.

> "This is a reflection of the view that one who has assumed a public trust should not withhold from other government officials information thought necessary to law enforcement. Furthermore, because public officials are often implicated in crimes which are peculiarly clandestine, their resort to the privilege presents a more serious obstacle to those investigating government corruption." Note, *Denying The Privilege Against Self-Incrimination To Public Officers,* 64 Harv. L. Rev. 987 (1951).

More pointedly,

> "Anybody may keep out of jail by invoking the privilege against self-incrimination. But there are many posts in which we may legitimately require standards of conduct higher than those sufficient to keep out of jail.
>
> "No one ever raised a protest when policemen earning $5,000 a year questioned about the source of the $100,000 they have banked were dismissed from their posts when they invoked the privilege against self-incrimination." Hook, *Common Sense and the Fifth Amendment,* 73 (1957).

The State of New Jersey, in accordance with established doctrine, has imposed strict standards of official and personal conduct on the part of its public employees. Public employees, particularly policemen, under state law are required to cooperate fully with government and to make

frank disclosure when their office or activities have become suspect. It is only to the extent, therefore, that reliance upon the privilege against self-incrimination is or becomes incompatible with the duties of public office that it may be limited or curtailed; and then, only in its application and relationship to persons in public employment. This, it is submitted, is a reasonable, practical and necessary rule dictated by the fundamental need on the part of the government for self-preservation.

C. The advice to a police officer in the course of an official investigation relating to his activities that he has the privilege to refuse to testify, that any testimony he gives must be voluntary and that such testimony may be used against him in a criminal proceeding, coupled with the advice that his failure to testify might result in proceedings for removal, is fair and reasonable and does not constitute a threat or coercion.

It is well established that a police officer has a duty to cooperate with public officials with respect to matters relating to his office or the performance of his official duties. If he fails in this duty by invoking the privilege against self-incrimination in the course of an official investigation, he may be subject to proceedings for his dismissal or removal from office. (Point I, B, *supra.*) What then are the correlative duties which government owes such an officer? It would seem to be a matter of elemental fairness and due process to advise such a public officer, in the course of an official proceeding relating to his office and the performance of his official duties, of the full extent of his legal rights and obligations and the possible consequences of his failure to cooperate and to testify.

The New Jersey Supreme Court was of the opinion that the warning and advice given to the appellants by the

Deputy Attorney General in the course of the official investigation relating to their offices to be accurate, reasonable and fair. It likewise determined that the admission of appellants' testimony into evidence in their criminal trial did not violate their privilege against self-incrimination because their testimony did not issue as the result of any threats or coercion, express or implied from the advice given to them in conjunction with their statements.

The root of the inquiry is whether or not making an individual aware of the choices which confront him as a matter of law and enabling such an individual to make his own choice is tantamount to a threat or force which taints or vitiates his subsequent testimony. With cogency and basic common sense, courts have reasoned to the contrary.

In *United States, ex rel. Carthan* v. *Sheriff, City of New York,* 330 F. 2d 100 (2nd Cir. 1964), *cert. den.* 379 U. S. 929, appellant, a plastering inspector employed by the City of New York, appeared before a grand jury investigating possible corruption in the building department of the City of New York. He executed a limited waiver of immunity pursuant to §1123 of the New York City Charter, which requires a city employee subpoenaed before a grand jury to waive his privilege against self-incrimination with respect to city affairs or forfeit his office. Appellant testified and later submitted financial questionnaires to the grand jury. However, later when subsequently subpoenaed to produce copies of his income tax returns for certain years, he refused. He was adjudged in contempt and sentenced. The sentence was affirmed, the court stating:

> "Appellant knowingly waived his privilege against self-incrimination with respect to city affairs. Unlike Regan, he submitted financial questionnaires. Having taken advantage of the waiver to hold his

> job and having already undertaken to disclose his financial affairs to the Grand Jury, appellant cannot cry halt because the inquiry has gone into greater depth than he had anticipated * * *." 330 F. 2d at 102. *Cf. Stevens* v. *Marks, supra; Regan* v. *New York, supra.*

In *People* v. *Wheatman,* 48 Misc. 2d 85, 264 N. Y. S. 2d 292 (1965) an indictment charging perjury and taking unlawful fees was attacked by defendant on the ground that since he was a public officer at the time of the grand jury investigation, he was in effect required to execute the waiver of immunity against self-incrimination in order to protect his position by virtue of the New York Constitution and the New York City Charter. The court rejected this argument:

> "The act of the defendant in executing the waiver of immunity was a free and voluntary act. There was not compulsion whatever. He had a clear choice. He either could refuse to waive his rights or he could insist upon them. He chose to waive them, and having done so, he was a proper witness before the Grand Jury and could have been compelled to testify." 264 N. Y. S. 2d at 296.

In *United States* v. *Warden of Wallhill Prison, supra,* relator signed a waiver of immunity pursuant to §103-B of the General Municipal Law of New York requiring that public contractors waive immunity before investigative bodies on sanction of possible disqualification from receiving municipal contracts. Later, relator was convicted of the crimes of bribery and grand larceny, part of the conviction resting upon testimony obtained after the execution of the waiver. He challenged the use of this testimony

as being obtained under compulsion and used against him in violation of his privilege against self-incrimination. The court rejected this argument stating:

> "Relator has voluntarily waived his rights in that he signed a waiver of immunity with full realization of its implications and after conferring with counsel. Thus, his waiver was factually voluntary. The statute pursuant to which the waiver was signed is not unconstitutional; thus, the sanction therein set forth does not render the waiver voluntary, nor does putting him to the choice of waiver or possible disqualification constitute an abridgement of his rights without due process of law * * * The fact that relator signed the waiver only because he wanted the contract is a question of subjective state of mind, a calculated decision that he took after conferring with counsel * * *." 246 F. Supp. at 99. See *Wirtshafter* v. *Pennsylvania,* 206 Pa. Super. 721, 21 A. 2d 926 (1965), *allocatur den.* Pa. Super. (Pa. Supp. Ct.) 1966, cert. den. 35 U. S. L. Week 3127 (U. S. Oct. 10, 1966) (No. 49 Misc.) but see, *State* v. *Kimberlin,* 246 La. 441, 165 So. 2d 279 (1964) (dictum).

Appellants discount the determination by the New Jersey Supreme Court that there was, in fact, "no physical coercion, no overbearing tactics of psychological persuasion, no lengthy incommunicado detention, and no efforts to humiliate or ridicule the defendants" and that "the interrogation was conducted with a high degree of civility and restraint" (Ab30).

Appellants urge that because they had only "two real alternatives—either to incriminate themselves or to forfeit their public employment" (Ab32), their subsequent testimony was coerced. This was, in their opinion, an "im-

proper choice" (referring to *Frost Trucking Co.* v. *Railroad Commission*, 271 U. S. 583, 593 and *Stevens* v. *Marks*, *supra*, at 243). In effect, appellants assert that "[s]uch a state-imposed choice of evils is the very antithesis of a *free* choice by the individual concerned" (Ab35).

In actuality appellants were not put to the choice of "forfeiting their public office upon the assertion of the privilege against self-incrimination" (Ab35). Their assertion of the privilege merely exposed them to the possibility of removal from office. *This* is what they were told and, in accordance with New Jersey law, all that this could mean was that if an assertion of the privilege was incompatible with their duty as police officers then, in an appropriate proceeding with full opportunity to be heard and to explain their conduct, they might be removed or otherwise disciplined. Thus, the so-called "improper choice" is one which appellants now fabricate. It is not one which actually occurred.

There is no doubt that the facts pertaining to appellant's testimony herein fall within the purview of *Carthan, Wheatman and Warden of Wallhill Prison, supra*. For one thing, some of the appellants had counsel at the time of their initial questioning by the Deputy Attorney General. Some had conferred with counsel. All had the opportunity to obtain counsel. There can be no contention that the appellants did not clearly understand and comprehend the meaning and purport of the advice given to them preliminary to their questioning. They were questioned in an open, fair and constrained manner. There was no official badgering or fulminating in the course of the questioning. They were told specifically and clearly that their testimony must be voluntary, of their own free will and choosing without any threats or coercion. This they understood.

They were specifically told that they had the right or privilege to refuse to testify. This they understood. They were told that if they did testify their testimony, if incriminating, could be used in subsequent criminal proceedings against them or other persons. This they understood. They were also told that if they refused to testify to the questions put to them in the course of this official investigation, they might subject themselves to a proceeding for removal from office. This was well understood by them as police officers. With this complete and full advice as to their legal rights and obligations the appellants expressed that they were willing and ready to testify. To the extent, therefore, that they waived or forswore their privilege not to testify this waiver was "a free and voluntary act", the result of a "clear choice".

Other facts are deserving of emphasis on the point that the testimony of the appellants was not the product of compulsion or overborne wills. The appellants gave similar testimony to the Camden County Prosecutor in a subsequent phase of the investigation. In the course of this interrogation they were *not* apprised of the consequence that they might be subject to removal or discipline in a proper proceeding for failure to cooperate or to testify. Surely, no inference can be drawn that this omission in the later examination was treacherous or had an adverse impact upon them. Appellants obscure this fact by contending that the previous advice of the Deputy Attorney General in the initial investigation, more than one year before, though not mentioned by the Camden County Prosecutor, in some way carried over with and continued to permeate and overbear their minds. This is sheer speculation and fantasy, a makeweight without factual foundation. Their subsequent testimony was not the result of a "threat" made more than a year ago; it was the result of a deliber-

ate, conscientious decision to cooperate. Indeed, appellants went further in evincing a willingness to testify. They voluntarily took the stand to testify at their trial, this presumably at the direction of counsel. In the course of their freely proffered testimony the appellants make abundantly clear their participation and implication in the crimes for which they were charged.

It is sensibly appreciated that a policy to be subserved by the privilege against self-incrimination and the exclusion of involuntary statements is to enforce civil behavior by police officers. *Rogers* v. *Richmond, supra,* at 541. Here the conduct of the questioners was in every way decent and restrained.

The appellants have in no way suggested factually that they were coerced, threatened or subjected to duress in giving their testimony. The basic test for determining involuntariness is whether, under all circumstances, the defendant's will was overborne and his capacity for self-determination critically impaired. *Culombe* v. *Connecticut,* 367 U. S. 568, 602. *Escobedo* v. *State of Illinois,* 378 U. S. 478; *Miranda* v. *Arizona, supra.* There has been no intimation that appellants would not have testified fully and freely even in the absence of the advice given to them. (The appellant Naglee gave her testimony without the benefit of such advice.) The argument now made on behalf of appellants fails to do them credit. It is apparent from their obvious willingness to cooperate and testify during the course of these entire proceedings that they as police officers conceived that their duty called for a candid and full disclosure of their activities in connection with the charges of ticket fixing; they may have felt that "two wrongs" are infinitely worse than a single wrong. Conceivably nothing was to be gained by their refusal to co-

operate and to make full disclosure. Their testimony, in effect, may have reflected their feelings that they wanted to make amends and in some measure expiate their dereliction. In the totality of the surrounding facts, it strongly appears that the testimony of the appellants throughout these proceedings was volitional. Their current assertion that their testimony was the result of threats, coercion and overbearing is just not plausible.

Under such circumstances there is no violation of the privilege against self-incrimination. Indeed, if the appellants had not been advised with respect to the possibility of their removal from office for failure to testify and they had in fact refused to testify and were thereafter subjected to disciplinary proceedings, they could with some justification urge trickery and deceit on the part of the State. It is not unreasonable, therefore, to advise public employees such as police officers and those who are directly and intimately involved in the actual enforcement and administration of the criminal laws that their duty demands the highest standards of ethical and professional conduct. This duty includes at the very least the obligation to cooperate with law enforcement authorities and to make full disclosure with respect to their offices and the performance of their official duties when these have become suspect. The safety and welfare of society and the continued confidence of the public in law enforcement officials require this. The privilege against self-incrimination, in this context, does not demand the contrary.

POINT II

The New Jersey Supreme Court has full responsibility over the internal administration of the state judicial system including the issuance and disposition of local traffic tickets, and there was no denial of due process of law because the New Jersey Supreme Court which affirmed the convictions herein ordered an investigation to be conducted by the Attorney General with respect to "ticket-fixing" activities and, without further intercession by the court, the matter was referred to the prosecutor who completed the investigation and the criminal prosecution.

Appellants argue that the actions of the New Jersey Supreme Court as the "actual instigator of these criminal cases" resulted in a denial of due process (Ab50). It is suggested argumentatively that the involvement of the New Jersey Supreme Court by initiating the investigations and directing the referral of the matter to the county prosecutor cast such a pall over the entire proceedings that it deprived "the whole course of criminal procedure in the New Jersey courts of the appearance of the basic disinterestedness and impartiality which was so much a part of the hallmark of due process of law" (Ab51). This argument, sounded in ringing tones, is replete with insinuations, but wholly lacking in factual support. It obscures the premise that the New Jersey Supreme Court has the primary responsibility to supervise the entire court system in the public interest and to assure the proper administration of justice. And it proceeds completely without basis for the allegation that there was animus or vindictiveness on the part of the Court in its judicial review of the trial court's convictions.

A. The Supreme Court of New Jersey has full control and jurisdiction over the state judiciary including the supervision of the operations of Municipal Courts and the issuance and disposition of local traffic tickets.

Under provisions of the New Jersey Constitution of 1947, *Art.* VI, the Chief Justice of the Supreme Court is the "administrative head of all courts in the State", *N. J. Const., Art.* VI, §VII,, *par.* 1. And "under the settled construction of *Art.* VI, §II, *par.* 3 of the Constitution of 1947, the Supreme Court has exclusive and plenary power to promulgate rules governing practice and procedure in our courts". *George Siegler Co.* v. *Norton,* 8 N. J. 374, 381-386, 86 A. 2d 8 (1952); see also, *In re Pfizer,* 6 N. J. 233, 78 A. 2d 80 (1951).

> "The rule making power of the Supreme Court . . . is not a privilege to be exercised by it (the court) at its option; on the contrary, it is a duty that the justices of the Supreme Court must exercise as part of their constitutional obligations . . . ." *State* v. *Otis Elevator Co.,* 12 N. J. 1, 14, 95 A. 2d 715 (1953).

Since it is well settled that the magistrates' courts are a part of the state judiciary, *In re Mattera,* 34 N. J. 259, 168 A. 2d 38 (1961); *Krieger* v. *Jersey City,* 27 N. J. 535, 143 A. 2d 564 (1958), it, therefore, necessarily follows that such courts are subject to the rule making power of the Supreme Court, *State* v. *Ahrens,* 25 N. J. Super. 201, 95 A. 2d 255 (App. Div. 1953), as well as to the common law supervisory power of the Supreme Court over the inferior courts within its jurisdiction. Not only does the supervisory power extend to rule making and administration, but it also extends to the power to control the ministerial officers of the courts. *Pino* v. *Bertone,* 26 N. J. Super. 429, 98 A. 2d 345 (L. Div. 1953).

The New Jersey Supreme Court has regulated with meticulous care the conduct of municipal court proceedings with respect to the issuance and disposition of traffic tickets. Rule 8:10 of the New Jersey Rules of Practice, pertaining to local criminal courts, specifies with particularity the procedures to be followed in cases involving so-called "traffic offenses". This Rule prescribes that there shall be a uniform traffic ticket as formulated by the Administrative Director of the Courts; the manner in which the complaint and summons, *i.e.*, the traffic ticket, is to be issued; the manned in which traffic tickets are to be printed and distributed to law enforcement officers and the records and reports which must be kept with respect to their proper disposition. It is further provided that "Any person who aids in the disposition of a traffic ticket or summons in any manner other than that authorized by the court shall be proceeded against for contempt in accordance with Rule 4:87-2." R.R. 8:10-2, as amended. The Administrative Office of the Courts, in accordance with the Rules of Practice of the New Jersey Supreme Court, has issued a "Prescribed Procedure for the Issuance and Control of the Uniform Traffic Ticket." Appendix A hereto, pp. 1a-9a, *infra*.

It is not remarkable that the New Jersey Supreme Court has this responsibility for the supervision of the state judiciary. Indeed this power is inherent.

> "... [I]t is well settled that the highest court in any common law jurisdiction has such supervisory power, derived from the English Common Law, as it may find essential to the effective administration of justice within its jurisdiction," *Kendall* v. *United States*, 37 U. S. (12 Pet.) 524 (1838).

It is beyond question that the highest court in a common law jurisdiction has such power so as to assure that the inferior courts do not depart from proper judicial activity, become dictatorial or oppressive in their conduct, or otherwise behave improperly so as to interfere with or reflect upon the court system, or shake public confidence in the administration of justice or the judiciary. *State* v. *Scarborough*, 75 N. M. 702, 410 P. 2d 732 (1966).

Thus, it becomes clear that the New Jersey Supreme Court, as the highest court in the jurisdiction, is duty bound to supervise the performance of the entire court system, including the magistrates' courts. "Responsibility for a result implies powers reasonably necessary to achieve it. More specifically, the power to make rules imparts the power to enforce them." *In re Matter*, *supra*, 34 N. J. at 272.

The appellants cite *Massett Building Co.* v. *Bennett*, 4 N. J. 53, 71 A. 2d 327 (1950) as standing for the principle that the judiciary should not engage, in a wholesale manner, in nonjudicial activity. *Massett* is not applicable to the instant case, for here the judiciary has not entered into a nonjudicial activity. On the contrary, the Supreme Court, by requesting the Attorney General to investigate what seemed to be certain irregularities within its own branch, acted in a manner consistent with its duties and responsibilities under both the common law and the Constitution of New Jersey.

B. The Supreme Court of New Jersey was neither prejudiced, as a matter of law, nor is there any factual basis to support a finding of actual prejudice or partiality legally sufficient to require a reversal of appellants' conviction.

What appellants find offensive as a matter of due process is the action on the part of the highest court of a state "to act as a complainant, investigator, prosecutor and ultimate judge in a given case" (Ab51). In overdramatizing the issue, appellants misstate it.

Evidently, the appellants contend that the New Jersey Supreme Court, by requesting the initial investigation by the Attorney General, became a prejudiced court and could not constitutionally sit as a competent court of review. *In re Murchison,* 349 U. S. 133 (Ab51) was concerned with the "one man judge-grand jury system" that operated pursuant to Michigan law. In that case this Court held that it was a violation of due process because of the danger of inherent prejudice for a judge to sit as a trial judge upon a case the result of his own bill of indictment in his grand jury role.

The instant matter is not remotely analogous. The New Jersey Supreme Court did not act as a grand jury. To the contrary, the appellants were indicted by a regularly impaneled grand jury sitting in Camden County, New Jersey, after a presentment by the prosecutor of that country. Thus, the New Jersey Supreme Court did not take any part in the accusatory procedures as was true in *Murchison, supra.* Moreover, no adverse inference can be drawn fairly from the fact that the Court certified the case on its own motion. This it may do under its rules of procedure. R.R. 1:10-1(a). This it has frequently done in a large number of appeals which it hears annually (Appendix B, pp. 12a-13a, *infra*).

In *Tumey* v. *Ohio,* 273 U. S. 510 (Ab53), this Court reversed a conviction of one found guilty of a violation of the local liquor law by a mayor whose remuneration depended upon a conviction. In that case, not only did the hearer have a direct pecuniary interest in a conviction, but the town of which he was mayor shared in the fine money. In *Tumey* it was held that because of such an interest the hearer was, as a matter of law, unqualified to sit and that to do so would result in a violation of due process of law. Herein, the Court had no such material or pecuniary interest. Its only interest, and an interest which is common to all courts, was that justice should prevail and that the integrity of the courts should be maintained.

It is a well settled doctrine that a fair trial is one in which the bearer is able to make a final decision upon the evidence adduced rather than upon extra-record material or knowledge. The fact that the hearer may have certain prejudices that may affect his verdict is not alone enough to disqualify him as long as it is made clear that he is able to decide the case upon the evidence presented. *American Tobacco Co.* v. *United States,* 147 F. 2d 93 (6th Cir. 1944), *aff'd* 328 U. S. 781 (1945); *Reynolds* v. *United States,* 98 U. S. 145 (1878). It is not enough that a possibility of prejudice exists. What must be proven is that "those strong and deep impressions which close the mind to a fair consideration of the case existed." *Reynolds* v. *United States, supra,* 98 U. S. at 155, citing Justice Marshall in *United States* v. *Burr,* 25 Fed. Cas. 51 (1807). Such allegations must be substantiated by facts and reasons and not by mere conclusions or speculations; such charges, furthermore, should be most carefully considered in order to safeguard the judiciary from frivolous attacks upon its dignity and integrity. *United States* v. *Valenti,* 120 F. Supp. 80 (D. N. J. 1954). Such prejudice, more-

over, will neither be inferred nor presumed but must be proved with definiteness and certainty. *Cf. In re Larsen,* 17 N. J. Super. 564, 86 A. 2d 430 (App. Div. 1952).

It cannot be seriously contended that because the New Jersey Court has administrative responsibility with respect to the conduct of state judicial officers, that criminal sanctions are preempted merely because the Court itself suspects criminality on the part of those subject to its supervision. In disciplinary matters, for example, evidence presented to the Court relating to professional conduct may also involve criminality for which criminal sanctions are appropriate. *In re Orsini,* 37 N. J. 500, 181 A. 2d 771 (1962). As stated by the New Jersey Supreme Court in *In re Mattera, supra,* 34 N. J. at 266, 267, 168 A. 2d at 42:

> "A single act of misconduct may offend the public interest in a number of areas and call for an appropriate remedy as to each hurt. Thus it may require removal from public office. It may also require removal from public office. It may also require criminal prosecution. Still further it may require that the roster of attorneys be cleansed of a miscreant. The remedies are not cumulative to vindicate a single interest; rather each is designed to deal with a separate need. We can think of no reason why a prescription in the Constitution of a remedy for one purpose should be found to bespeak an intention to deny government the power to protect the public in its other interests or to immunize the offender from the further consequences his act would otherwise entail. *Cf. Reilly* v. *Ozzard,* 33 N. J. 529, 539 (1960)."

The allegations of the appellants herein do not meet the bare requirements necessary to show actual or presumed

prejudice by the New Jersey Supreme Court. It is to be emphasized that the New Jersey Supreme Court did not sit as a trier of the facts. The evidence adduced at the trial level, even apart from the self-incriminatory statements of the defendants, demonstrated guilt. And, the essential issue raised in this appeal by appellants involves essentially a legal question as to whether or not the defendants' statements can be considered voluntary. The New Jersey Supreme Court had nothing whatever to do with respect to the propounding of the questions, the defendants' responses to the questions or the admission of the defendants' answers into evidence at the trial. The New Jersey Supreme Court touches this issue only in its capacity as an appellate tribunal. The appellants have not presented any facts or reasons which prove that the Court was prejudiced.

POINT III

Appellants have no standing to raise on appeal before this Court for the first time the issue that their convictions should be reversed because there was a denial of due process as a result of prejudice of the New Jersey Supreme Court.

Appellants gloss ever so lightly the question of whether they are entitled to raise the issue as to the alleged deprivation of due process attributable to the prejudice of the New Jersey Supreme Court. They state somewhat elliptically that their failure to raise this issue cannot "invest the state court procedure with an aura of constitutional respectability" (Ab53). As demonstrated under *Point II, supra,* the state court procedure was constitutionally fair and respectable as such—and not by appellants' failure to raise the issue.

It is a well established rule that a litigant cannot raise in a court on appeal a point not raised below. *McCandless* v. *Furland,* 293 U. S. 67; *Parker* v. *Motor Boat Sales,* 314 U. S. 244; *Oklahoma* v. *U. S. Civil Service Commission,* 330 U. S. 127; *Globe Indemnity Co.* v. *Calbeck,* 230 F. Supp. 14 (D. C. S. D. Texas 1960).

Appellants in the case at bar, after remaining silent on the point in the court below, now challenge the competency of the New Jersey Supreme Court. This failure to raise the contention in the trial court falls directly within the ambit of the stated rule. Moreover, the United States Supreme Court has placed another prohibition on appellants' actions. In the case of *Blair* v. *Osterlein,* 275 U. S. 220, 225, Mr. Justice Stone, speaking for the Court stated: "It is only in exceptional cases and *then only in cases from the federal courts,* that questions not pressed or passed upon below are considered here." (Emphasis supplied.)

A litigant is not entitled to challenge for the first time on appeal the competency of a court when it has not been raised below. *Kramer* v. *U. S.,* 166 F. 2d 515 (9th Cir. 1948); *Taylor* v. *U. S.,* 179 F. 2d 640 (9th Cir. 1950); *Lucas* v. *U. S.,* 325 F. 2d 867 (9th Cir. 1963). In *Laughlin* v. *U. S.,* 151 F. 2d 281 (D. C. Cir. 1945), the court held that where a party had knowledge sufficient to disqualify a judge prior to the beginning of trial, failure to challenge until trial was correctly dismissed. Failure to make such a motion timely was said to constitute a waiver of the challenge. *Id.*

In *Pacheco* v. *Puerto Rico,* 300 F. 2d 759 (1st Cir. 1962) where the judge who acted as committing magistrate was later elevated and presided at trial, the court of appeals held that appellant, by waiting until his appeal to raise the challenge had waived whatever right he might have had. The court cited *Yakus* v. *U. S.,* 321 U. S. 414, 444 which stated:

> "No procedural principle is more familiar to this court than that a constitutional right may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it."

In the case at bar, the appellants were at all times fully aware of the totality of facts involved. It would seem that there are no circumstances whatsoever to justify any departure from the established principle, and for this reason it is submitted that appellants' challenge must be disregarded.

CONCLUSION

For all of the foregoing reasons, it is respectfully suggested that (1) the appeals herein be dismissed or, if viewed as petitions for writs of *certiorari*, the petitions be dismissed; (2) if the appeals herein not be dismissed or if they be deemed petitions for writs of *certiorari* which be granted, the judgments affirming the convictions of the appellants should be upheld and affirmed.

Respectfully submitted,

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APPENDIX A

Prescribed Procedure for the Issuance and Control of the Uniform Traffic Ticket

ADMINISTRATIVE OFFICE OF THE COURTS
STATE HOUSE ANNEX
TRENTON, N. J. 08625

INTRODUCTION

The purpose of this prescribed procedure is to assist the magistrates and court personnel in maintaining records essential to accuracy and convenience in properly accounting for all traffic tickets issued to local police officers. The information contained herein refers only to traffic tickets supplied to local police officers, and not to supplies of the uniform traffic ticket maintained by the Division of Motor Vehicles, the State Police and other agencies.

RESPONSIBILITY

The responsibility of the magistrate for the control of local traffic tickets is set forth in Rule 8:10-1(c) which states: "Every magistrate shall be responsible for all uniform traffic tickets issued to law enforcement officers or others in his municipality, and for their proper disposition, and shall prepare or cause to be prepared such records and reports relating to such uniform traffic tickets as the Administrative Director of the Courts shall prescribe." Rule 8:10-2 states: "Any person who aids in the disposition of a traffic ticket or summons in any manner other than that authorized by the court shall be proceeded against for criminal contempt in the manner provided by Rule 8:8-2."

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It is essential that the magistrate personally review the traffic ticket control record so that he can be satisfied that the record is maintained currently and properly in the manner prescribed by the Administrative Director of the Courts pursuant to Rule 8:10-1(c).

Uniform Traffic Ticket; Form

Rule 8:10-1(a) provides that the form of the uniform traffic ticket shall be prescribed by the *Administrative Director of the Courts.*

Before ordering supplies of the uniform traffic ticket from the printer, the magistrate should carefully check for the latest amendment of the form. He should also provide for the printing of consecutive serial numbers for all the tickets, and the serial number of each ticket must appear on all of its four copies.

Purchase of Traffic Tickets

Supplies of the uniform traffic ticket should be obtained through the appropriate municipal purchasing agent upon requisition of the magistrate. Delivery should be made to the *court,* which should check the order for ticket numbers and form. The supply should be so stored as to provide adequate protection against fire, or water damage or misuse. The supply should be accessible to only a limited number of responsible persons authorized by the magistrate.

Distribution to Police Officers

In municipalities where there are large numbers of police officers and distribution of books of traffic tickets to individual police officers is made by the police department, the

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Municipal Court should provide the police department with no more than a three-month supply on each written requisition. Tickets should be supplied in strictly consecutive serial number order, and a responsible high-ranking police officer should sign a receipt for them. Distribution of tickets to individual police officers is then made through the precinct stations by a responsible officer. Each police officer should sign a receipt for his tickets. A suggested form for the receipt is shown below:

• • •

RECEIPT FOR TRAFFIC TICKETS

Ticket Numbers ..... To ..... Inclusive

I have on (Date .....)
received the above Uniform Traffic Tickets and have examined same and find them properly numbered and in good condition.

X .....
(Signature of Police Officer)

Shield No. ..... Precinct No. .....

• • •

At the end of each day the officer in charge of the precinct should forward to the court clerk a report of the tickets supplied to police officers, stating specifically the date, inclusive serial numbers of the tickets supplied, and the name of each police officer who has received them. The court clerk should then promptly enter this information on the traffic ticket control record.

In the smaller municipalities where the court distributes tickets to the individual police officers, only a limited num-

ber of tickets should be supplied to an officer in accordance with the officer's activity in traffic cases. The entry on the traffic ticket control record should be made promptly by the court clerk when the tickets are supplied to each police officer. In every event the police officer must sign a receipt for the tickets supplied to him. Some of the smaller municipal courts have the police officers sign the "Name of Officer" column of the traffic ticket control record.

In the event that relatively inactive police officers have had books of tickets in their possession for several months or more, they should be requested to return the unused tickets to the court and new books should be issued to them. The old unused tickets should then be issued to the police officers who are most active in issuing summonses (such as the officers on parking meter duty) so that the older tickets will be used promptly. Proper entries as to the reissue of tickets should be made in the traffic ticket control record. In this way the record can be updated and the court clerk will have a smaller number of pages to work with when accounting for the tickets.

It is necessary that each police officer sign a receipt for all traffic tickets supplied to him, whether the officer receives the tickets from his superior in the police department or from the Municipal Court. The importance of distributing limited supplies, making distribution in strictly consecutive ticket serial number order, and of requiring receipts cannot be too strongly emphasized.

Traffic Complaints By Private Citizens

Private citizens wishing to file traffic complaints should be able to do so at police headquarters or in the Municipal Court. It is desirable to have a book of tickets charged

out to the court clerk and another to the chief of police for this purpose, or to have the ticket furnished to the private citizen making the complaint from the book of one of the police officers. Appropriate entries should be made in the traffic ticket control record. (See Specimen Ticket Control Record, Ticket #2716, page 6.)

TRAFFIC TICKET CONTROL RECORD

A specimen of the traffic ticket control record, with sample entries, is attached hereto, page 6.

The responsibility for properly maintaining the ticket control record rests with the magistrate, although he may assign the detail work to a *court employee* under his direct supervision. The magistrate's responsibility for traffic tickets as set forth in Rule 8:10-1(c) can be fulfilled only if adequate records are properly maintained and he elicits the cooperation of the local police and court personnel. Sample entries have been made to illustrate the information described in this prescibed procedure. It is recommended that the specimen form be studied carefully and that the records of the court follow this plan as outlined, with such minor modifications that are necessary to meet problems uniquely peculiar to the municipality.

This record is the inventory of *local* tickets only and should *not* include tickets issued to defendants by the State Police, Motor Vehicle Inspectors, and other agencies. It must be kept current by the court to show the *status and disposition* of each ticket. All traffic tickets supplied to *local* police officers *must be individually entered in the ticket control record in strictly consecutive sequence by ticket serial number.* Entries should be made in the traffic ticket control record when tickets are issued to officers

and currently thereafter as each case progresses. Specifically, further entry must be made therein when the ticket is filed with the court and again when the case is disposed of. *It is essential that the traffic ticket control record be kept up to date, regardless of the volume of local traffic tickets handled by the court.*

INSTRUCTIONS AND EXPLANATION OF SAMPLE TICKET CONTROL RECORD

Column 1—"Ticket Number": *Each individual traffic ticket must be listed separately in consecutive sequence by ticket serial number.* Some of the municipal courts have facilitated this work by having the consecutive individual traffic ticket serial numbers on the traffic ticket control record sheets *prenumbered* by the printer supplying the forms. The prenumbering can also be done by the court personnel, preferably with a numbering machine.

Column 2—"Date Issued": Enter the date that the supply of tickets was given to the individual police officer.

Column 3—"Name of Officer": Enter the name of the police officer who received the tickets. Police officers should be required to sign receipts for all tickets issued to them. In municipalities where there are only a few police officers the *personal signature* of the officer in *Column 3—"Name of Officer"* section of the traffic ticket control record can suffice as a receipt. In the larger municipalities the police officers should sign receipts that show the inclusive serial numbers of the tickets received. (See sample receipt, page 2)

Column 4—"Disposition of Ticket": Enter first the *docket number* (*"T" Number*) on the left side of the column. When the ticket is disposed of enter an abbreviated notation as to the disposition on the right side of the column.

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Each day police officers should submit to the court the original white "Complaint" copies of traffic tickets issued to defendants. ***Docket entries must be made as soon as possible after the complaint is filed with the court.*** The prompt docketing of traffic complaints, both parking and non-parking, is essential to the ticket control and to avoid the possibility of overlooking complaints in which there have been no appearances, adjournments, etc.

By docketing each traffic case promptly and noting the docket number in *Column 4—"Disposition of Ticket,"* the court clerk will be able to determine readily whether any tickets are unaccounted for. As an example, on the attached sample of the ticket control record, if an entry is made in *Column 4—"Disposition of Ticket"* for ticket numbers 2701, 2703, 2704, 2706, and 2707, it is apparent that 2704 must have been used by the police officer and he should be requested to account for the ticket. Numbers 2708, 2709, and 2710 would probably still be in his possession as unused tickets. All this information is easily seen by the blank spaces appearing in the *"Disposition of Ticket"* column of the traffic ticket control record.

The recommended procedure is to first put into consecutive traffic *ticket* serial number order all the complaints that are filed with the court each day. Summonses that have already been received by the violations bureau, with payment, should be attached to the complaints. Entries in the traffic docket should then be made for *all* traffic complaints, both parking and non-parking, ***whether or not the case has been completed.*** It is realized that for most of the parking cases the names and addresses of defendants will not appear on the complaints; nevertheless, it is essential that appropriate entries be promptly made in the traffic docket.

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The "T" Number (traffic *docket* number in consecutive order) should be entered on the face of each complaint when the docket entry is made. Rule 8:13(10(a) provides that upon *express authorization in writing from the Administrative Director of the Courts* the individual entry of parking cases in the traffic docket may be dispensed with. In these courts a rubber stamp impression showing the *date that the parking complaint was filed with the court* may be used in lieu of a "T" (docket) number.

For cases already paid through the violations bureau the reverse sides of the respective traffic complaints should also be completed. For all of the traffic tickets, both paid and undisposed of, the appropriate entries can now be made in *Column 4—"Disposition of Ticket"* in the traffic ticket control record. These entries are facilitated by keeping the complaints in consecutive *traffic ticket serial number order.*

In *Column 4—"Disposition of Ticket"* enter in the right-hand side of the column a brief note as to the disposition so that the ticket can be located and accounted for as necessary. It is sufficient to enter "Pd., "N.G.," "Dis.," as abbreviations for paid, not guilty, or dismissed respectively. If disposed of tickets are filed by date, the date of disposition should be entered. The traffic ticket control record should not be an unnecessary repetition of all the information contained in the traffic docket. The purpose of the traffic ticket control record is to account for every ticket; therefore, every entry on this record should be made with this purpose in mind.

Cases "closed' because of non-appearance of defendants in accordance with Rule 8:10-3, complaints dismissed because of faulty parking meters, and tickets voided, lost or

spoiled (which must be accounted for by a written report from the police officer to the magistrate) should be noted in the Disposition column of the traffic ticket control record, with date. For example, an entry for a spoiled ticket would be "Spoiled-Report rec'd *(date)*" as shown for Ticket Number 2706 on the attached specimen of the traffic ticket control record.

The following item appears on the monthly municipal court report, white form MM 9/64: "I have personally reviewed the traffic ticket control record this month and I am satisfied that this record is maintained currently and properly in the manner prescribed by the Administrative Director of the Courts pursuant to Rule 8:10-1(c)." The magistrate's signature on the report signifies that he has fulfilled his responsibility for the control of local traffic tickets.

Page

TRAFFIC TICKET CONTROL RECORD
(Insert Name of Municipality)

1	*2*	*3*	*4*	
Ticket Number	*Date Issued to Officer*	*Name of Officer*	*Disposition of Ticket Docket #*	*Disposition*
2701	7-1-64	John P. Jones	T-405	Pd. 7-2-64
2702			T-406	Pd. 7-2-64
2703			T-409	NG. 7-18-64
2704				
2705			T-416	

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Ticket Number	*Date Issued to Officer*	*Name of Officer*	*Disposition of Ticket Docket #*	*Disposition*
2706				Spoiled—Report rec'd 7-10-64
2707			T-420	
2708				
2709				
2710				
2711	7-3-64	Peter Bourne	T-407	Pd. 7-3-64
2712				Spoiled—Report rec'd 7-6-64
2713			T-411	Pd. 7-6-64
2714			T-412	Closed 8-10-64 per Rule 8:10-3
2715			T-413	
2716	7-6-64		T-414	NG. 7-17-64
Complaint signed by Mrs. Mabel Smith, 10 Oak Drive				
2717			T-415	
2718				
2719				
2720				

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Ticket Number	*Date Issued to Officer*	*Name of Officer*	*Disposition of Ticket Docket #*	*Disposition*
2721	7-7-64	Frank Doe	T-417	Pd. 7-7-64
2722			T-418	NG. 7-13-64
2723			T-419	Pd. 7-9-64
2724				Voided—Report re'cd 7-8-64
2725			T-421	
2726				
2727				
2728				
2729				
2730				

APPENDIX B

Annual Report of the Administrative Director of the Courts—1964-1965

TABLE A-1

APPEALS TO THE SUPREME COURT

SEPTEMBER 1, 1965 TO AUGUST 31, 1965
(39 SESSIONS OF COURT)

Status of the Calendar

Appeals on the Calendar September 1, 1964:		
Argued and held for further argument	3	
Not yet perfected	8	
Perfected and ready for argument	36	47
Appeals added:		
Notice of appeal filed during period	44	
Certifications granted on petition	24	
Certifications on Court's own motion	65	133
		180
Appeals removed from calendar:		
Appeals argued and decided	137	
Appeals dismissed before argument	4	141

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Appeals on the calendar September 1, 1965:		
Not yet perfected	28	
Perfected and ready for argument	11	39
Dates of filing of appeals on calendar:		
January 1, 1965 to March 31, 1965	8	
April 1, 1965 to June 30, 1965	20	
July 1, 1965 to August 31, 1965	11	39

Disposition of Appeals

Appeals argued during year	137
Appeals decided after argument	138
Appeals dismissed after argument	4

*135 arguments, see footnote.

Outcome of Appeals Decided

Affirmed	82	
Reversed	47	
Modified	4	
Remanded	3	
Dismissed	2	138

Classification of Appeals Decided

Appeals as of right	39	
Certification on petition granted	36	
Certification on Court's own motion	63	138

Note: The unit of this Table is the individual appeal. One or more appeals may be argued together as one case.

Source: Supreme Court Clerk's Office.

SUPREME COURT OF THE UNITED STATES

No. 13.—October Term, 1966.

Edward J. Garrity et al., Appellants, *v.* State of New Jersey.	On Appeal From the Supreme Court of New Jersey.

[January 16, 1967.]

Mr. Justice Douglas delivered the opinion of the Court.

Appellants were police officers in certain New Jersey boroughs. The Supreme Court of New Jersey ordered that alleged irregularities in handling cases in the municipal courts of those boroughs be investigated by the Attorney General, invested him with broad powers of inquiry and investigation, and directed him to make a report to the court. The matters investigated concerned alleged fixing of traffic tickets.

Before being questioned each appellant was warned (1) that anything he said might be used against him in any state criminal proceeding; (2) that he had the privilege to refuse to answer if the disclosure would tend to incriminate him; but (3) that if he refused to answer he would be subject to removal from office.[1]

Appellants answered the questions. No immunity was granted, as there is no immunity statute applicable in

[1] "Any person holding or who has held any elective or appointive public office, position, or employment (whether state, county, or municipal), who refuses to testify upon matters relating to the office, position, or employment in any criminal proceeding wherein he is a defendant or is called as a witness on behalf of the prosecution, upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself or refuses to waive immunity when called by a grand jury to testify thereon or who willfully refuses or fails to appear before any court, commission, or body of this state which has the right to inquire under oath upon

these circumstances. Over their objections, some of the answers given were used in a subsequent prosecution for conspiracy to obstruct the administration of the traffic laws. Appellants were convicted and their conviction was sustained over their protests that their statements were coerced,[2] by reason of the fact that, if they refused to answer, they could lose their positions with the police department. See 44 N. J. 209, 207 A. 2d 689.

We postponed the question of jurisdiction to a hearing on the merits. 383 U. S. 941. The statute whose validity was sought to be "drawn in question," 28 U. S. C. § 1257 (2) was the forfeiture statute.[3] But the New Jersey Supreme Court refused to reach that question (44 N. J., at 223, 207 A. 2d, at 697), deeming the voluntariness of the statements as the only issue presented. *Id.*, at 220–222, 207 A. 2d, at 695–696. The statute is therefore too tangentially involved to satisfy 28 U. S. C. § 1257 (2), for the only bearing it had was whether, valid or not, the fear of being discharged under it for refusal to answer on the one hand and the fear of

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matters relating to the office, position, or employment of such person or who, having been sworn, refuses to testify or to answer any material question upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself, shall, if holding elective or public office, position, or employment, be removed therefrom or shall thereby forfeit his office, position, or employment and any vested or future right of tenure or pension granted to him by any law of this state provided the inquiry relates to a matter which occurred or arose within the preceding five years. Any person so forfeiting his office, position, or employment shall not thereafter be eligible for election or appointment to any public office, position, or employment in this state." N. J. Rev. Stat. § 2A:81–17.1 (Supp. 1965).

[2] At the trial the court excused the jury and conducted a hearing to determine whether, *inter alia*, the statements were voluntary. The State offered witnesses who testified as to the manner in which the statements were taken; the appellants did not testify at that hearing. The court held the statements to be voluntary.

[3] Note 1, *supra*.

self-incrimination on the other was "a choice between the rock and the whirlpool" [4] which made the statements products of coercion in violation of the Fourteenth Amendment. We therefore dismiss the appeal, treat the papers as a petition for certiorari (28 U. S. C. § 2103), grant the petition and proceed to the merits.

We agree with the New Jersey Supreme Court that the forfeiture of office statute is relevant here only for the bearing it has on the voluntary character of the statements used to convict appellants in their criminal prosecutions.

The choice imposed on appellants was one between self-incrimination or job forfeiture. Coercion that vitiates a confession under *Chambers* v. *Florida*, 309 U. S. 227, and related cases can be "mental as well as physical"; "the blood of the accused is not the only hallmark of an unconstitutional inquisition." *Blackburn* v. *Alabama*, 361 U. S. 199, 206. Subtle pressures (*Lyra* v. *Denno*, 347 U. S. 556; *Haynes* v. *Washington*, 373 U. S. 503) may be as telling as coarse and vulgar ones. The question is whether the accused was deprived of his "free choice to admit, to deny, or to refuse to answer." *Lisenba* v. *California*, 314 U. S. 219, 241.

We adhere to *Boyd* v. *United States*, 116 U. S. 616, a civil forfeiture action against property. A statute offered the owner an election between producing a document or forfeiture of the goods at issue in the proceeding. This was held to be a form of compulsion in violation of both the Fifth Amendment and the Fourth Amendment. *Id.*, at 634–635. It is that principle that we adhere to and apply in *Spevack* v. *Klein*, *post*, p. ——.

The choice given appellants was either to forfeit their jobs or to incriminate themselves. The option to lose their means of livelihood or to pay the penalty of self-

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[4] *Stevens* v. *Marks*, 383 U. S. 234, 243, quoting from *Frost Trucking Co.* v. *Railroad Comm'n*, 271 U. S. 583, 593.

incrimination is the antithesis of free choice to speak out or to remain silent. That practice, like interrogation practices we reviewed in *Miranda* v. *Arizona*, 384 U. S. 436, 464–465, is "likely to exert such pressure upon the individual as to disable him from making a free and rational choice." We think the confessions were infected by the coercion [5] inherent in this scheme of questioning

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[5] Cf. Lamm, The 5th Amendment and Its Equivalent in Jewish Law, 17 Decalogue Jour. 9 (1967):

"It should be pointed out, at the very outset, that the Halakhah does not distinguish between voluntary and force confessions, for reasons which will be discussed later. And it is here that one of the basic differences between Constitutional and Talmudic Law arises. According to the Constitution, a man cannot be compelled to testify against himself. The provision against self-incrimination is a privilege of which a citizen may or may not avail himself, as he wishes. The Halakhah, however, does not permit self-incriminating testimony. It is inadmissible, even if voluntarily offered. Confession, in other than a religious context, or financial cases completely free from any traces of criminality, is simply not an instrument of the Law. The issue, then, is not compulsion, but the whole idea of legal confession.

. . . . . .

"The Halakhah, then, is obviously concerned with protecting the confessant from his own aberrations which manifest themselves, either as completely fabricated confessions, or as exaggerations of the real facts. . . . While certainly not all, or even most criminal confessions are directly attributable, in whole or part, to the Death Instinct, the Halakhah is sufficiently concerned with the minority of instances, where such is the case, to disqualify all criminal confessions and to discard confession as a legal instrument. Its function is to ensure the total victory of the Life Instinct over its omnipresent antagonist. Such are the conclusions to be drawn from Maimonides' interpretation of the Halakhah's equivalent of the Fifth Amendment.

"In summary, therefore, the Constitutional ruling on self-incrimination concerns only forced confessions, and its restricted character is a result of its historical evolution as a civilized protest against the use of torture in exhorting confessions. The Halakhic ruling,

and cannot be sustained as voluntary under our prior decisions.

It is said that there was a "waiver." That, however, is a federal question for us to decide. *Union Pac. R. Co.* v. *Public Service Commission,* 248 U. S. 67, 69–70; *Stevens* v. *Marks, supra,* 243–244. The Court in *Union Pac. R. Co.* v. *Public Service Commission, supra,* in speaking of a certificate exacted under protest and in violation of the Commerce Clause said:

> "Were it otherwise, as conduct under duress involves a choice, it always would be possible for a State to impose an unconstitutional burden by the threat of penalties worse than it in case of a failure to accept it, and then to declare the acceptance voluntary . . . ." *Id.,* at 70.

Where the choice is "between the rock and the whirlpool," duress is inherent in deciding to "waive" one or the other.

> "It always is for the interest of a party under duress to choose the lesser of two evils. But the fact that a choice was made according to interest does not exclude duress. It is the characteristic of duress properly so called." *Ibid.*

In that case petitioner paid under protest. In these cases also, though appellants succumbed to compulsion, they preserved their objections, raising them at the earliest possible point. Cf. *Abie State Bank* v. *Bryan,* 282 U. S. 765, 776. The cases are therefore quite different from the situation where one who is anxious to make a clean breast of the whole affair volunteers the information.

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however, is much broader and discards confessions in toto, and this because of its psychological insight and its concern for saving man from his own destructive inclinations." *Id.,* at 10, 12.

Mr. Justice Holmes in *McAuliffe* v. *New Bedford*, 155 Mass. 216, 29 N. E. 517, stated a dictum on which New Jersey heavily relies:

> "The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman. There are few employments for hire in which the servant does not agree to suspend his constitutional right of free speech, as well as of idleness, by the implied terms of his contract. The servant cannot complain, as he takes the employment on the terms which are offered him. On the same principle, the city may impose any reasonable condition upon holding offices within its control." *Id.*, at 220, 29 N. E., at 517–518.

The question in this case, however, is not cognizable in those terms. Our question is whether the Government, contrary to the requirement of the Fourteenth Amendment, can use the threat of discharge to secure incriminatory evidence against an employee.

We held in *Slochower* v. *Board of Education*, 350 U. S. 551, that a public school teacher could not be discharged merely because he had invoked the Fifth Amendment privilege against self-incrimination when questioned by a congressional committee:

> "The privilege against self-incrimination would be reduced to a hollow mockery if its exercise could be taken as equivalent either to a confession of guilt or a conclusive presumption of perjury . . . . The privilege serves to protect the innocent who otherwise might be ensnared by ambiguous circumstances." *Id.*, at 557–558.

We conclude that policemen, like teachers and lawyers, are not relegated to a watered-down version of constitutional rights.

There are rights of constitutional stature whose exercise a State may not condition by the exaction of a price. Engaging in interstate commerce is one. *Western Union Tel. Co.* v. *Kansas*, 216 U. S. 1. Resort to the federal courts in diversity of citizenship cases is another. *Terral* v. *Burke Constr. Co.*, 257 U. S. 529. Assertion of a First Amendment right is still another. *Lovell* v. *City of Griffin*, 303 U. S. 444; *Murdock* v. *Pennsylvania*, 319 U. S. 105; *Thomas* v. *Collins*, 323 U. S. 516; *Lamont* v. *Postmaster General*, 381 U. S. 301, 305–306. The imposition of a burden on the exercise of a Twenty-fourth Amendment right is also banned. *Harman* v. *Forssenius*, 380 U. S. 528. We now hold the protection of the individual under the Fourteenth Amendment against coerced confessions prohibits use in subsequent criminal proceedings of confessions obtained under threat of removal from office, and that it extends to all, whether they are policemen or other members of our body politic.

Reversed.

SUPREME COURT OF THE UNITED STATES

No. 13.—October Term, 1966.

Edward J. Garrity et al., Appellants, v. State of New Jersey. } On Appeal From the Supreme Court of New Jersey.

[January 16, 1967.]

Mr. Justice Harlan, whom Mr. Justice Clark and Mr. Justice Stewart join, dissenting.

The majority opinions both here and in *Spevack* v. *Klein*, *post*, stem from fundamental misconceptions about the logic and necessities of the constitutional privilege against self-incrimination. I fear that these opinions will seriously and quite needlessly hinder the protection of other important public values. I must dissent again here, as I have in *Spevack*.

The majority employs a curious mixture of doctrines to invalidate these convictions, and I confess to difficulty in perceiving the intended relationships among the various segments of its opinion. I gather that the majority believes that the possibility that these policemen might have been discharged had they refused to provide information pertinent to their public responsibilities is an impermissible "condition" imposed by New Jersey upon petitioners' privilege against self-incrimination. From this premise the majority draws the conclusion that the statements obtained from petitioners after a warning that discharge was possible were inadmissible. Evidently recognizing the weakness of its conclusion, the majority attempts to bring to its support illustrations from the lengthy series of cases in which this Court, in light of all the relevant circumstances, has adjudged the voluntariness *in fact* of statements obtained from accused persons.

The majority is apparently engaged in the delicate task of riding two unruly horses at once: it is presumably arguing simultaneously that the statements were involuntary as a matter of fact, in the same fashion that the statements in *Chambers* v. *Florida*, 309 U. S. 227, and *Haynes* v. *Washington*, 373 U. S. 503, were thought to be involuntary, and that the statements were inadmissible as a matter of law, on the premise that they were products of an impermissible condition imposed on the constitutional privilege. These are very different contentions and require separate replies, but in my opinion both contentions are plainly mistaken, for reasons that follow.

I.

I turn first to the suggestion that these statements were involuntary in fact. An assessment of the voluntariness of the various statements in issue here requires a more comprehensive examination of the pertinent circumstances than the majority has undertaken.

The petitioners were at all material times policemen in the boroughs of Bellmawr and Barrington, New Jersey. Garrity was Bellmawr's chief of police and Virtue one of its police officers; Holroyd, Elwell, and Murray were police officers in Barrington. Another defendant below, Mrs. Naglee, the clerk of Bellmawr's municipal court, has since died. In June 1961 the New Jersey Supreme Court *sua sponte* directed the State's Attorney General to investigate reports of traffic ticket fixing in Bellmawr and Barrington. Subsequent investigations produced evidence that the petitioners, in separate conspiracies, had falsified municipal court records, altered traffic tickets, and diverted moneys produced from bail and fines to unauthorized purposes. In the course of these investigations the State obtained two sworn statements from each of the petitioners; portions of those statements were admitted at trial. The petitioners were

convicted in two separate trials of conspiracy to obstruct the proper administration of the state motor traffic laws, the cases being now consolidated for purposes of our review. The Supreme Court of New Jersey affirmed all the convictions.

The first statements were taken from the petitioners by the State's Deputy Attorney General in August and November 1961. All of the usual indicia of duress are wholly absent. As the state court noted, there was "no physical coercion, no overbearing tactics of psychological persuasion, no lengthy incommunicado detention, and no efforts to humiliate or ridicule the defendants." 44 N. J. 209, 220, 207 A. 2d 689, 695. The state court found no evidence that any of the petitioners were reluctant to offer statements, and concluded that the interrogations were conducted with a "high degree of civility and restraint." *Ibid.*

These conclusions are fully substantiated by the record. The statements of the Bellmawr petitioners were taken in a room in the local firehouse, for which Chief Garrity himself had made arrangements. None of the petitioners were in custody before or after the depositions were taken; each apparently continued to pursue his ordinary duties as a public official of the community. The statements were recorded by a court stenographer, who testified that he witnessed no indications of unwillingness or even significant hesitation on the part of any of the petitioners. The Bellmawr petitioners did not have counsel present, but the Deputy Attorney General testified without contradiction that Garrity had informed him as they strolled between Garrity's office and the firehouse that he had arranged for counsel, but thought that none would be required at that stage. The interrogations were not excessively lengthy, and reasonable efforts were made to assure the physical comfort of the witnesses. Mrs. Naglee, the clerk of the Bellmawr municipal court, who

was known to suffer from a heart ailment, was assured that questioning would cease if she felt any discomfort.

The circumstances in which the depositions of the Barrington petitioners were taken are less certain, for the New Jersey Supreme Court found that there was an informal agreement at the Barrington trial that the defendants would argue simply that the possibility of dismissal made the statements "involuntary as a matter of law." The defense did not contend that the statements were the result of physical or mental coercion, or that the wills of the Barrington petitioners were overborne. Accordingly, the State was never obliged to offer evidence of the voluntariness in fact of the statements. We are, however, informed that the three Barrington petitioners had counsel present as their depositions were taken. Insofar as the majority suggests that the Barrington statements are involuntary in fact, in the fashion of *Chambers* or *Haynes*, it has introduced a factual contention never urged by the Barrington petitioners and never considered by the courts of New Jersey.

As interrogation commenced, each of the petitioners was sworn, carefully informed that he need not give any information, reminded that any information given might be used in a subsequent criminal prosecution, and warned that as a police officer he was subject to a proceeding to discharge him if he failed to provide information relevant to his public responsibilities. The cautionary statements varied slightly, but all, except that given to Mrs. Naglee, included each of the three warnings.[1] Mrs. Naglee was

[1] The warning given to Chief Garrity is typical. "I want to advise you that anything you say must be said of your own free will and accord without any threats or promises or coercion and anything you say may be, of course, used against you or any other person in any subsequent criminal proceedings in the courts of our state.

"You do have, under our law, as you probably know, a privilege to refuse to make any disclosure which may tend to incriminate you. If you make a disclosure with knowledge of this right or privi-

not told that she could be removed from her position at the court if she failed to give information pertinent to the discharge of her duties. All of the petitioners consented to give statements, none displayed any significant hesitation, and none suggested that the decision to offer information was motivated by the possibility of discharge.

A second statement was obtained from each of the petitioners in September and December 1962. These statements were not materially different in content or circumstances from the first. The only significant distinction was that the interrogator did not advert even obliquely to any possibility of dismissal. All the petitioners were cautioned that they were entitled to remain silent, and there was no evidence whatever of physical or mental coercion.

All of the petitioners testified at trial, and gave evidence essentially consistent with the statements taken from them. At a preliminary hearing conducted at the Bellmawr trial to determine the voluntariness of the statements, the Bellmawr petitioners offered no evidence beyond proof of the warning given them.

The standards employed by the Court to assess the voluntariness of an accused's statements have reflected a number of values, and thus have emphasized a variety

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lege, voluntarily, you thereby waive that right or privilege in relation to any other questions which I might put to you relevant to such disclosure in this investigation.

"This right or privilege which you have is somewhat limited to the extent that you as a police officer under the laws of our state . . . may be subjected to a proceeding to have you removed from office if you refuse to answer a question put to you under oath pertaining to your office or your function within that office. It doesn't mean, however, you can't exercise that right. You do have the right."

A: "No, I will cooperate."

Q: "Understanding this, are you willing to proceed at this time and answer any questions?"

A. "Yes."

of factual criteria. The criteria employed have included threats of imminent danger, *Payne* v. *Arkansas*, 356 U. S. 560, physical deprivations, *Reck* v. *Pate*, 367 U. S. 433, repeated or extended interrogation, *Chambers* v. *Florida*, 309 U. S. 227, limits on access to counsel or friends, *Crooker* v. *California*, 357 U. S. 433, length and illegality of detention under state law, *Haynes* v. *Washington*, 373 U. S. 503, individual weakness or incapacities, *Lynumn* v. *Illinois*, 372 U. S. 528, and the adequacy of warnings of constitutional rights, *Davis* v. *North Carolina*, 384 U. S. 737. Whatever the criteria employed, the duty of the Court has been "to examine the entire record," and thereby to determine whether the accused's will "was overborne by the sustained pressures upon him." *Davis* v. *North Carolina*, 384 U. S. 737, 741, 739.

It would be difficult to imagine interrogations to which these criteria of duress were more completely inapplicable, or in which the requirements which have subsequently been imposed by this Court on police questioning were more thoroughly satisfied. Each of the petitioners received a complete and explicit reminder of his constitutional privilege. Three of the petitioners had counsel present; at least a fourth had consulted counsel but freely determined that his presence was unnecessary. These petitioners were not in any fashion "swept from familiar surroundings into police custody, surrounded by antagonistic forces, and subjected to the techniques of persuasion . . . ." *Miranda* v. *Arizona*, 384 U. S. 436, 461. I think it manifest that, under the standards developed by this Court to assess voluntariness, there is no basis for saying that any of these statements were made involuntarily.

II.

The issue remaining is whether the statements were inadmissible because they were "involuntary as a matter of law," in that they were given after a warning that

New Jersey policemen may be discharged for failure to provide information pertinent to their public responsibilities. What is really involved on this score, however, is not in truth a question of "voluntariness" at all, but rather whether the condition imposed by the State on the exercise of the privilege against self-incrimination, namely dismissal from office, in this instance serves in itself to render the statements inadmissible. Absent evidence of involuntariness in fact, the admissibility of these statements thus hinges on the validity of the consequence which the State acknowledged might have resulted if the statements had not been given. If the consequence is constitutionally permissible, there can surely be no objection if the State cautions the witness that it may follow if he remains silent. If both the consequence and the warning are constitutionally permissible, a witness is obliged, in order to prevent the use of his statements against him in a criminal prosecution, to prove under the standards established since *Brown* v. *Mississippi*, 297 U. S. 298, that as a matter of fact the statements were involuntarily made. The central issues here are therefore identical to those presented in *Spevack* v. *Klein*, *post:* whether consequences may properly be permitted to result to a claimant after his invocation of the constitutional privilege, and if so, whether the consequence in question is permissible. For reasons which I have stated in *Spevack* v. *Klein*, in my view nothing in the logic or purposes of the privilege demands that all consequences which may result from a witness' silence be forbidden merely because that silence is privileged. The validity of a consequence depends both upon the hazards, if any, it presents to the integrity of the privilege and upon the urgency of the public interests it is designed to protect.

It can hardly be denied that New Jersey is permitted by the Constitution to establish reasonable qualifications and standards of conduct for its public employees. Nor

can it be said that it is arbitrary or unreasonable for New Jersey to insist that its employees furnish the appropriate authorities with information pertinent to their employment. Cf. *Beilan* v. *Board of Public Education*, 357 U. S. 399; *Slochower* v. *Board*, 350 U. S. 551. Finally, it is surely plain that New Jersey may in particular require its employees to assist in the prevention and detection of unlawful activities by officers of the state government. The urgency of these requirements is the more obvious here, where the conduct in question is that of officials directly entrusted with the administration of justice. The importance for our systems of justice of the integrity of local police forces can scarcely be exaggerated. In evidence, it need only be recalled that this Court itself has often intervened in state criminal prosecutions precisely on the ground that this might encourage high standards of police behavior. See, *e. g.*, *Ashcraft* v. *Tennessee*, 322 U. S. 143; *Miranda* v. *Arizona*, *supra*. It must be concluded, therefore, that the sanction at issue here is reasonably calculated to serve the most basic interests of the citizens of New Jersey.

The final question is the hazard, if any, which this sanction presents to the constitutional privilege. The purposes for which, and the circumstances in which, an officer's discharge might be ordered under New Jersey law plainly may vary. It is of course possible that discharge might in a given case be predicated on an imputation of guilt drawn from the use of the privilege, as was thought by this Court to have occurred in *Slochower* v. *Board*, *supra*. But from our vantage point, it would be quite improper to assume that New Jersey will employ these procedures for purposes other than to assess in good faith an employee's continued fitness for public employment. This Court, when a state procedure for investigating the loyalty and fitness of public employees might result either in the *Slochower* situation or in an

assesment in good faith of an employee, has until today consistently paused to examine the actual circumstances of each case. *Beilan* v. *Board of Public Education, supra*; *Nelson* v. *Los Angeles County*, 362 U. S. 1. I am unable to see any justification for the majority's abandonment of that process; it is well calculated both to protect the essential purposes of the privilege and to guarantee the most generous opportunities for the pursuit of other public values. The majority's broad prohibition, on the other hand, extends the scope of the privilege beyond its essential purposes, and seriously hampers the protection of other important values. As the majority's prohibition is applied in this case, it seems implicit in it, despite the majority' disclaimer, that it would entirely forbid a sanction which presents, at least on its face, no hazard to the purposes of the constitutional privilege, and which may reasonably be expected to serve important public interests. We are not entitled to assume that discharges will be used either to vindicate impermissible inferences of guilt or to penalize privileged silence, but must instead presume that this procedure is only intended and will only be used to establish and enforce standards of conduct for public employees.[2] As such, it does not minimize or endanger the petitioners' constitutional privilege against self-incrimination.[3]

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[2] The legislative history of N. J. S. A. 2A:81–17.1 provides nothing which clearly indicates the purposes of the statute, beyond what is to be inferred from its face. In any event, the New Jersey Supreme Court noted below that the State would be entitled, even without the statutory authorization, to discharge state employees who declined to provide information relevant to their official responsibilities. There is therefore nothing to which this Court could properly now look to forecast the purposes for which or circumstances in which New Jersey might discharge those who have invoked the constitutional privilege.

[3] The late Judge Jerome Frank thus once noted, in the course of a spirited defense of the privilege, that it would be entirely per-

I would therefore conclude that the sanction provided by the State is constitutionally permissible. From this, it surely follows that the warning given of the possibility of discharge is constitutionally unobjectionable. Given the constitutionality both of the sanction and of the warning of its application, the petitioners would be constitutionally entitled to exclude the use of their statements as evidence in a criminal prosecution against them only if it is found that the statements were, when given, involuntary in fact. For the reasons stated above, I cannot agree that these statements were involuntary in fact.

I would affirm the judgments of the Supreme Court of New Jersey.

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missible to discharge police officers who decline, on grounds of the privilege, to disclose information pertinent to their public responsibilities. Judge Frank quoted the following with approval:

"'*Duty required them to answer. Privilege permitted them to refuse to answer. They chose to exercise the privilege, but the exercise of such privilege was wholly inconsistent with their duty as police officers.* They claim that they had a constitutional right to refuse to answer under the circumstances, but . . . *they had no constitutional right to remain police officers* in the face of their clear violation of the duty imposed upon them.' *Christal* v. *Police Commission of San Francisco.*" Citing 33 Cal. App. 2d 564, 92 P. 2d 419. (Emphasis added by Judge Frank.) *United States* v. *Field*, 193 F. 2d 92, 105–106.